



Don't Risk It- Preventing Common Real Estate Violations

3 Hours Correspondence Continuing Education

Don't Risk It: Preventing Common Violations

Orientation

The learning objectives of this course are as follows:

1. Understand the meaning of misrepresentation and the different types: innocent misrepresentation, negligent misrepresentation, and fraudulent misrepresentation
2. Understand how advertising violations can occur, as well as what is required to be in an advertisement, and what should not be put into an advertisement.
3. Understand how to effectively use documentation to avoid violations.
4. Understand what disclosure is, and what is required of a licensee.

To enhance comprehension, review questions will be asked throughout the course.

A final exam will be administered after the course is completed to check for mastery of the material.

If you do not pass the final exam, you can review the course material and retake the exam at no additional cost.

If assistance is needed with this course you can contact PDH Academy at 888-564-9098 or at pdhacademy@gmail.com.

After completing the course and final exam, we ask that you take our course survey to help us continue to provide high-quality continuing education.

Course Introduction

This course will teach you the ins and outs of running a successful real estate brokerage. During this course you will learn how to:

- avoid common violations within your real estate industry
- limit risk using the correct documentation,
- limits risk through disclosures;

When you complete this course you will leave with:

- knowledge of common violations and how to avoid making those violations;
- an understanding of how to use correct documentation and disclosure;
- familiarity with case studies that will help you to better understand how risky real estate practices can be perceived in a court of law

Common Violations

In this section we will discuss the most common violations that occur among real estate agents. Those are:

- Misrepresentation;
 - Innocent Misrepresentation
 - Negligent Misrepresentation
 - Fraudulent or Intentional Misrepresentation
- Advertising violations;

First we will discuss misrepresentation.

Misrepresentation is a false statement or nondisclosure of material fact made with the intention of inducing some action by another party. Misrepresentation could be as simple as an affirmative statement: “the house does not have termites.” To a concealment of facts that is not reasonably attainable knowledge of the other party.

There are 3 types of misrepresentation that will be discussed in the following sections:

- 1) Innocent Misrepresentation
- 2) Negligent Misrepresentation
- 3) Intentional or Fraudulent Misrepresentation

Common Violations- Innocent Misrepresentation

Innocent Misrepresentation - the real estate agent made a representation of a material fact that

he/she didn't know to be true or false. The agent had the ability to verify the statement, and the other party suffered damages due to the agent's statement

Example: The agent states: "The fence around the property is the property line." Without verification of this, the agent cannot truly know that to be fact.

The following case study demonstrates innocent misrepresentation:

Bortz v. Noon: Listing Broker Not Liable for Sales Associate's Misrepresentation to Buyer

May 1, 1999

An April, 1999 decision of the Pennsylvania Supreme Court, *Bortz v. Noon*, addressed the issue of misrepresentation in the context of a licensee acting as an innocent conduit of information from a third party.

In 1986, Albert Bortz (the "Buyer") entered into a contract with Mr. and Mrs. Noon (the "Sellers") to purchase their home located in Pittsburgh. A salesperson (the "Sales Associate") affiliated with the listing broker, Coldwell Banker Real Estate (the "Listing Broker"), was the selling licensee. The Buyer's lender required that the home's septic system pass a dye test before the closing. The Sales Associate referred the Buyer to a contractor who performed the test. He told the Sales Associate that system failed the test, and she informed the Buyer. Under the contract, the Sellers had the option of repairing the septic system, which they elected to do. They chose another contractor to do the work. After the contractor's work was done, an employee of the title insurance company told the Sales Associate that the system passed the dye test. She conveyed this information to the Buyer and the closing was scheduled.

After the closing, the Buyer learned that the septic system had not passed a dye test; in fact the title company had forgotten to have it tested. Testing revealed that the system could not be repaired. The property had to be connected to the public sewer system, at a cost of over \$15,000. In an equity proceeding, the Buyer sued the Listing Broker, the title company and the Sellers, seeking monetary damages and rescission of the sale. Finding the Listing Broker liable for the Sales Associate's misrepresentation, the Chancellor ruled in favor of the Buyer, but declined to rescind the sale. The Sellers appealed to the Superior Court, which upheld the lower court decision. Neither of these courts specified on which theory of misrepresentation their finding of liability was based.

Applying this to your practice: It is important to not rely on any third parties to verify facts, or to verify that work has been completed and is functioning. The agent representing the client needs to do this.

On appeal to the Pennsylvania Supreme Court, the issue was whether the Sales Associate had a duty to ascertain whether the septic system actually had passed a dye test and whether her failure to do so constituted a misrepresentation to the Buyer. The court reviewed Pennsylvania

law regarding liability for misrepresentation in-depth, and explained the theories of intentional misrepresentation, negligent misrepresentation, and innocent misrepresentation. It found no evidence that the Sales Associate intentionally misrepresented any facts to the Buyer, nor that she intended to deceive the Buyer by not providing him with copies of the reports, when she herself did not have copies of the reports. While she made an affirmative misrepresentation with respect to the dye test, she did so not knowing the information was false.

As far as negligent misrepresentation, the Pennsylvania Supreme Court stated that it has not recognized this cause of action in connection with a real estate licensee (although lower courts in the state have). It observed that courts in many other states recognize such a cause of action and have found liability where a real estate licensee fails to use reasonable care in ascertaining the veracity of a representation. Liability sometimes is found where a real estate licensee fails to independently verify a fact that the seller represents to the buyer, and which the licensee then passes on to the buyer.

The Bortz court noted that when the events took place, in 1986, the standard of care in the real estate brokerage business did not require a licensee to verify or disclose test results that were not ordered by the licensee and were not part of the sale contract. In this particular situation, the Sales Associate would not have had a reason to know that the title company failed to have the dye test performed. The court stated that the Sales Associate “was not acting as a source of information from the Sellers or other entity with whom she had an agency relationship and which might then trigger a duty to physically transfer the reports to the Buyer and verify the accuracy of statements that were material to the sale transaction.” Instead, she was acting as an “innocent conduit” of information from the title company, an apparently reliable source, to the Buyer. Nothing gave the Sales Associate notice that the information was false, and she did not have a duty to independently investigate.

The court stated that with these facts, imposing a duty on the Sales Associate to investigate the accuracy of the test would place too high a burden on real estate licensees. Therefore, it held that a real estate licensee does not have a duty to perform an independent investigation of a contractor’s report, where the licensee did not have an agency or contractual relationship with the third party. The court reversed the lower court’s decision, finding instead that the Listing Broker was not liable to the Buyer for the Sales Associate’s affirmative misrepresentations.

Common Violations- Negligent Misrepresentation

Negligent Misrepresentation- the real estate agent failed to use reasonable care when ascertaining the truth of a material defect, and the agent has an agency relationship with the party that was harmed.

Example: An agent sells a house to a buyer who stresses their need for peace and quiet. The agent promises the house is very quiet. In reality, the house next door is undergoing extensive, very noisy renovations. Although the agent did not know this, the agent promised that the house was quiet was made without the agent having any reason to believe that this

was not the case; the agent simply assumed. This is negligent misrepresentation. Had the agent known about the construction and lied about it however, it would become much more serious fraudulent misrepresentation.

The following case study demonstrates negligent misrepresentation:

Phillips v. Tyler

March 10, 2006

Facts

William L. and Jeanine L. Phillips purchased a house from G. Ronald Tyler and Linda S. Tyler in Wichita during October 1998. The Phillips sued the Tylers for negligent misrepresentation, negligent failure to repair, fraud, and nuisance in May 2003 because of the many defects they discovered in the house.

The defects were apparently from water infiltration in the roof and walls. When the house was constructed, no "kick-out flashings" were installed where the roof terminated against the house's exterior walls, thus allowing water to flow down into the exterior walls. The buyers' negligent failure to repair and nuisance claims were dismissed by the trial court by summary judgment, and the remaining claims were submitted to a jury.

For their negligent misrepresentation claim, the buyers alleged that the disclosure statement signed by the sellers was misleading because it was inconsistent when the sellers first indicated that the roof had leaked during the Tylers' ownership of the house and that repairs were made but then the document also indicated that the roof had not been "replaced/repared" during the Tylers' ownership. In fact, the Tylers had three different roofers make repairs to the roof a total of 10 times between 1992 and when the Tylers sold the house to the Phillips.

The buyers sought damages for cost of repairs, cost to remove mold, and consequential damages for being required to maintain two residences. After finding the sellers at fault only on the negligent misrepresentation claim and no fraud, a jury awarded the buyers \$900,000 as repair costs and \$198,811.70 for the loss of use of their home.

The Tylers appeal, claiming, among other things, that summary judgment should have been granted on the negligent misrepresentation claim since that claim was barred by written contracts signed by the Phillips.

Review

The court found the buyers claim that the fact that repairs, which were required to be made under an amended sales contract, were not made somehow supports the negligent misrepresentation claim. The court also points to the agreement signed at closing requiring the defendants to ensure that repairs be made to the roof as evidence of negligent misrepresentation. But neither of these documents give support to a claim of negligent misrepresentation. Nothing in the documents negate the other provisions requiring the

plaintiffs to rely on their own and their inspector's observations regarding the condition of the house.

While the buyers may have a breach of contract claim if the sellers failed to comply with their obligations under the contract, the purchase contract amendment and the contract for roof repairs do not support a finding of negligent misrepresentation.

The court also points out that the buyers' inspection of the roof revealed evidence of previous roof leaks and other water infiltration problems. While the Phillips may not have known the full extent of the previous roof leaks, their inspection did put them on notice that the roof had leaked in the past. Additionally, their inspector's report stated that the roof tiles "are installed such that flashing details are covered & not visible, therefore, inspection is limited." Thus, the Phillips also knew that their expert's inspection was limited at the time they purchased the house.

The inspection report clearly advises that there is "(e)vidence of past leakage where roofs [*sic*] terminate against walls (no "kick-out" at ends of flashings.)" And then again:

"11) Exterior insulation finish system (EIFS), also known as "synthetic stucco," has been installed as a "water-barrier" system (intended to prevent leakage behind siding). Most major manufactures [*sic*] now recognize that it is nearly impossible to prevent water from passing behind siding, and now recommended that EIFS be installed only as "water-managed" systems (that allow water to drain out, if it gets behind siding). "Testing with an electronic wet-wall detector indicated possible moisture below all roof-to-wall joints and around or below most windows. Potential for hidden dry-rot exists Recommend have further evaluated and repairs made, if needed, by a qualified licensed contractor."

Thus, the Phillips knew that there were many potential problems with the house. The Phillips' decision to not require a more detailed test of the roof, coupled with their decision to allow the Tylers to contract for limited liability, prevents a claim for negligent misrepresentation.

Furthermore, while the disclosure statement made by the sellers may have been ambiguous, the disclosure statement did indicate that the roof had leaked and that repairs had been made. Apparently, the Phillips did not seek further information regarding the nature of the leaks or repairs.

Common Violations- Intentional or Fraudulent Misrepresentation

Intentional or Fraudulent Misrepresentation- the real estate agent intentionally misled the party to induce them into a contract.

There are nine elements that must have occurred to prove liability:

That a representation was made

The representation was false

The that representation was material to the transaction
That the agent made the representation and knew it to be false or did not know it to be true
That the agent intended the purchaser to rely on it
The purchaser did not know it to be false
That the purchaser relied on it as truth
That the purchaser was reasonable in his reliance;
That the purchaser reliance caused him injury *

*Fordham Urban Law Journal

The following case study demonstrates misrepresentation.

Bowman v. Presley

On 30 September 2005 Richard and Dana Bowman (Buyers) purchased a house in Shawnee, Oklahoma from Michael and Heidi Presley (Sellers) for \$145,000. Linda Presley (Realtor®), a Century 21 Bob Crothers Realty (Broker) sales associate and the mother of seller Michael Presley, acted as the listing and selling agent. The house sold to Buyers was represented as containing 2890 square feet. Buyers give a straightforward reason for buying the house: they wanted a larger home, and Sellers appeared to offer a residence more sizeable than that Buyers then occupied.

Buyers contend the represented square footage of the house not only spurred their desire to buy the home, but also served as the criterion for calculating the \$145,000 purchase price. The house's true size, and whether that size may have been misrepresented to Buyers by Realtor® and Sellers, lies at the very center of this litigation.

Buyers' satisfaction with their newly acquired house ended abruptly when shortly after closing on the home Buyers received a copy of a mortgage appraisal prepared by Grace and Sons Appraisal Service (Grace). The appraisal gave the actual size of the house not as 2890, but rather as 2187 square feet: a difference of 703 square feet below the size represented to Buyers. Following this discovery, Buyers obtained from Grace a copy of another appraisal made by them when seller Michael Presley first purchased the house in 2000. This appraisal also gave the home's size as 2187 square feet. Buyers brought suit against Broker, Realtor®, and Sellers for damages based on allegations of fraud, breach of implied contract and, as against Broker and Realtor®, for violation of the Oklahoma Real Estate License Code.

Broker and Realtor® moved for summary judgment and Sellers likewise sought that disposition shortly afterwards. Movants argued that Buyers' reliance on the representation of size was misplaced, urging instead that prior to purchase Buyers bore a duty independently to determine the property's correct size.

Movants also claimed that Buyers waived their right to sue by signing the purchase contract and

closing agreement, the provisions of which are represented as precluding suit against movants. Finally, movants asserted that Buyers suffered no actual damages, regardless of whether the size was in fact misrepresented, because Buyers' mortgage appraisal ultimately valued the home at an amount greater than its purchase price despite the diminished size. Movants argued that the alleged absence of damages should defeat Buyers' legal claim.

The trial court gave summary judgment to all defendants. The Court of Civil Appeals (COCA), Division I, affirmed. We granted certiorari to clarify the relative duties of buyers and sellers of real estate and their agents when positive representations are made about the size of property.

The common law, which remains in force unless a legislative enactment expressly states otherwise, provides the elements of actionable fraud:

- 1) A false material misrepresentation,
- 2) Made as a positive assertion which is either known to be false or is made recklessly without knowledge of the truth,
- 3) With the intention that it be acted upon, and
- 4) Which is relied on by the other party to his (or her) own detriment.

Fraud is never presumed and each of its elements must be proved by clear and convincing evidence. Though correctly recognizing a genuine issue of fact concerning whether Buyers were deceived by appellees' misrepresentations, COCA erred in affirming summary judgment based upon a perceived lack of damages. Buyers have presented evidentiary materials sufficient to tender a disputed issue of fact with respect to damages.

Resolution:

Buyers of real property may rely on positive representations made by realtors and sellers about the property's size. Representations of the size of real property are statements of material fact, not expressions of opinion, and a buyer need not conduct a separate investigation to ascertain their truth. If the buyer later alleges fraudulent misrepresentation against the realtor or seller, questions of whether the buyer was in fact deceived and suffered detriment because of the misrepresentation must be decided by the trier of fact. A real estate licensee is in such instances also bound by a professional duty to treat all parties with honesty.

In this case the question of damages cannot be resolved based upon the estimations of value contained in the mortgage appraisal alone. An appraisal can give only an approximate value that is perceived by its author. Appraisals merely offer scenarios suggesting what a thing might be worth. The precise value of the thing in litigation must be determined by the trier of fact.

The jury is the sole and final arbiter. An appraisal that antedates the jury's verdict is but an item of evidence, the increased home value indicated by the mortgage appraisal, though probative of damages, is not dispositive of the issues. Neither are the appraisals of square footage in

themselves conclusive evidence of damage. Buyers need not explicitly controvert the mortgage appraisal's value estimate to raise a conflicting inference as to damages. Inconsistent appraisals of square footage define this litigation. The fact that two conflicting appraisals emanate from the same source - Grace, a professional appraiser - only clouds the issues to be considered.

The existence of significantly disparate appraisals of size raises a reasonable inference that appraisals of value might be similarly inconsistent, especially since no real certainty exists about the house's actual size, which will be linked inextricably to its value. Summary judgment is proper only when undisputed material facts support but a single inference that favors a movant's quest for relief. Amid a barrage of warring appraisals of size, appellees may not rely on a single assessment of value taken from a source that has only contributed to the uncertainty to prove Buyers have suffered no detriment.

The fact that Buyers purchased a house advertised as double the size of their former home raises a sufficient countervailing inference suggesting Buyers were at least in some part motivated to purchase Sellers' home because of its greater size. The extent to which this motivation possibly drove towards or even defined the bargain struck by Buyers and Sellers cannot be discerned from the record alone. The question must be resolved by the trier of fact.

Common Violations Review Questions:

- 1) If an agent makes a false statement with the intention of inducing a party to take some action, this is known as _____.
 - a. Inducement
 - b. Nondisclosure
 - c. Misrepresentation
 - d. Concealment

- 2) Which one of the following is not a common violation in real estate:
 - a. Crossing signs
 - b. Ethics violations
 - c. Advertising violations
 - d. Transactions violations

- 3) Most common violations that occur do NOT include:
 - a. Advertising
 - b. Misrepresentation
 - c. Illegal listings
 - d. Crossing signs

- 4) How many elements are included in fraudulent misrepresentation?
- a. 5
 - b. 6
 - c. 3
 - d. 9
- 5) Which of the following is NOT a form of misrepresentation:
- a. Innocent
 - b. Applied
 - c. Negligent
 - d. Fraudulent

Common Violations- Advertising Violations

Advertising violations are the next common violation. In order to prevent advertising violations your marketing and advertising must include the following elements:

- Company affiliation name prominently displayed;
- Office/ Brokerage name;
- Any information required by your broker;
- Truthful information

Advertising requirements are in place to protect the consumer. Advertisement must allow the consumer to fully understand:

- who the agent is;
- and which broker the agent is licensed under

Any time you advertise these elements must be clear.

Most violations today are occurring on social media and web advertising. For example: Craigslist and Facebook. Every post you place on these sites must display the required information listed above.

Other violations that occur in advertising may include:

- enticement;
- inducement;
- or discrimination of the consumer

According to Webster dictionary, inducement is a motive or consideration that leads one to action. Enticement means to lead one down a path or lead astray. Discrimination is bias or prejudice resulting in denial of opportunity, or unfair treatment of a protected class. All three of these need to be avoided in all of your marketing and advertising.

Discrimination through use of any type of advertising or marketing is strictly prohibited. Discrimination occurs in advertising through use of language that excludes a protected class. Protected Class in real estate is defined by the Fair Housing Act. The federal law passed in 1968 and amended in 1988 with support of the National Association of Realtors®. The original law strove to ensure equal housing opportunity for all, making it illegal to discriminate on the basis of race, color, religion, sex or national origin. The amendments extended protection to families with a children and person with disabilities.

An example of this type of discriminatory advertising could be as simple as “neighborhood great for retired people” or “home has a large garage that could be used for a man’s workshop”

The following guidelines are provided by the US Department of Housing and Urban

Development for licensees to assist them with marketing while remaining within Fair Housing regulations:

Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, et seq.) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to housing for older persons, as defined in section 807(b) of the act.

Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

Definitions.

- Dwelling means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- Family includes a single individual.
- Person includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.
- To rent includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.
- Discriminatory housing practice means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.
- Handicap means, with respect to a person—
 - (1) A physical or mental impairment which substantially limits one or more of such person's major life activities,
 - (2) A record of having such an impairment, or

- (3) Being regarded as having such an impairment. This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.
- Familial status means one or more individuals (who have not attained the age of 18 years) being domiciled with—
 - (1) A parent or another person having legal custody of such individual or individuals; or
 - (2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

Scope.

General. This part describes the matters the Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

Advertising media. This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

Persons placing advertisements. A failure by persons placing advertisements to use the criteria contained in this part, when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the General Counsel in making a determination of reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

Affirmative advertising efforts. Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Act, the Department will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

- Words descriptive of dwelling, landlord, and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.
- Words indicative of race, color, religion, sex, handicap, familial status, or national origin—
 - Race--Negro, Black, Caucasian, Oriental, American Indian.
 - Color--White, Black, Colored.
 - Religion--Protestant, Christian, Catholic, Jew.
 - National origin--Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.
 - Sex--the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.
 - Handicap--crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.
 - Familial status--adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute housing for older persons as defined in Part 100 of this title.
 - Catch words--Words and phrases used in a discriminatory context should be avoided, e.g., restricted, exclusive, private, integrated, traditional, board approval or membership approval.
 - Symbols or logotypes. Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
 - Colloquialisms. Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.
 - Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference. References to a synagogue,

- congregation or parish may also indicate a religious preference.
- Area (location) description. Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

- Selective geographic advertisements. Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.
- Selective use of equal opportunity slogan or logo. When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.
- Selective use of human models when conducting an advertising campaign. Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

Fair housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

- Use of Equal Housing Opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking

public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see Appendix I) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see Appendix I) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

- Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.
- Coverage of local laws. Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.
 - Notification of fair housing policy—
 - Employees. All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.
 - Clients. All publishers or advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.
 - Publishers' notice. All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see Appendix I). The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

<http://www.hud.gov/offices/fheo/library/part109.pdf>

Examples of Violations:

Discriminatory advertising:

- “neighborhood great for retired people”
- “home has a large garage that could be used for a man’s workshop”
- “Home is a great floor plan for a large family”

Rationale: You can in no way exclude any protected class from a home.

Online violations:

- For Sale: Call John Smith at 333-777-4444
- For Sale: Call 333-777-4444: licensed agent in State of Missouri

Rationale: Licensed agents must say they are licensed as well as what company they are licensed under.

Inducement:

- A postcard mailed out that says “Buy with me and receive a free IPAD”

Rationale: Licensed agents cannot use an item of value or money to entice the consumer into using them for a licensed real estate activity.

The following list is composed of the most common claims reported by E&O companies* between January 2001 and December 2010:

- Fraud
- Breach of Duty
- Breach of Contract
- Negligence
- Bodily Injury/Property Damage
- Misrepresentation in regard to property condition
- Consumer Protection Act
- Earnest Money Dispute
- Misrepresentation of Flooding/Leaks
- Misrepresentation regarding the Value of Property

Although these claims were not all covered in this course, the list is here to make you more aware, and encourage you to do further research. An excellent resource for learning more about cases pertaining to these topics is your E & O insurance provider*.

**E&O stands for Errors and Omissions. E&O Insurance is a type of liability insurance.*

In conclusion, it is important to remember that real estate related lawsuits are filed every day. The cases and examples presented in this course are just a few samples of violations that occur. Familiarizing and educating yourself with the most common types of claims will hopefully make it easier to recognize and avoid violations.

Common Violations Review Questions:

- 6) The most common advertising violations today occur in which format:
 - a. TV
 - b. Radio
 - c. Social media/ internet
 - d. Billboards

- 7) True or false? Enticement is allowable in an advertisement.
 - a. True
 - b. False

- 8) The fair housing act was created in:
 - a. 1968
 - b. 1988
 - c. 1972
 - d. 1980

- 9) A real estate agent must include _____ in all advertisements:
 - a. Who the agent is
 - b. Which brokerage the agent is affiliated with
 - c. Both a & b
 - d. None of the above

- 10) True or false? According to the Fair Housing Act, the following advertisement is legal:
"Exclusive apartment complex for adults."
 - a. True
 - b. False

Risk Reduction- Documentation

Documenting is a key part to having a well-run real estate brokerage. Documentation reduces liability and risk. Documenting simply means keeping documentation of every transaction and communication. This way if at any point you need to go back and look at a transaction you know what happened and when it happened. If you are a broker, you may not be involved one on one in every transaction. Thus it is critical that your agents have documentation that is clear enough to allow you to step in when a conflict or concern arises. Documentation could include, but is not limited to:

- call logs,
- email,
- written documents,
- contracts, etc.

If you are the broker, you have the right not only to require documentation that your State Licensing Board requires, but any additional documents that you deem important enough to require. You may determine that some documents within a file are required in order for the file to be considered complete. While other documents you may deem to be kept as a best practice, but are not required. Requiring some documents may reduce your E&O premium. This decision is up to you, but it is critical that your agents know which is which.

To eliminate confusion about documentation, it is good to have for the broker to have a checklist for agents. Reviewing this checklist at training and orientation make it more likely to be completed, and for documents to be correct and in the file. So many times real estate agents are working with multiple clients and may have multiple transactions in play at once, so having good documentation of communication with clients and other agents can be critical in keeping information straight and not missing deadlines. The checklist can help keep each file straight and in compliance.

Risk Reduction- Disclosure

It is the agents' duty to keep the client informed of all facts that might affect the transaction. Because you are responsible for your agent's actions it also is your duty. The duty of disclosure includes relevant information or material facts that the agent knows or in some cases what the agent should have known. Under most state laws the real estate agent is obligated to discover facts regardless of whether those facts are favorable or unfavorable to the client's position. Disclosure may include but not limited to:

- Any material defect known about the property involved in the transaction
- Deficiencies in sales contract provisions, buyer's financing that may affect the ability for the buyer to purchase
- Other types of deficiencies that need to be disclosed could include an incorrect market value of the property, any interest or prospective interest the agent has in the buyer or the buyer's business

Example: the agent would be managing the property after closing and receiving compensation), relationship to client (such as when the agent or relative of the agent is the purchaser or seller) plus any other disclosure that could be seen as fact affecting the decision of buyer or seller in the transaction.

The following case study emphasizes the importance of full disclosure of any known material defects about the property involved in the transaction:

Douglas v. Visser

February 25,

FACTS

In 2007, Nigel and Kathleen Douglas were looking for a home in Blaine, Washington. They are Canadian citizens and wanted a second home in the area. In the course of the search, they discovered a property owned by Terry and Diane Visser. Visser is a licensed real estate agent and listed the property himself.

The Vissers purchased the property in 2005. At the time, it needed significant work. The Vissers intended to renovate and rent the property. They demolished bungalows that were located on the property. In the main house, they renovated the bathroom, repaired portions of rot, insulated the exterior walls, fixed wall paneling, insulated the ceiling, installed Styrofoam ceiling tiles, and replaced the exterior bellyband. During the course of repairs, the Vissers realized that the renovations would take more time and money than they expected and decided to sell the house.

After the Douglases made an offer, the Vissers filled out a seller disclosure statement. But, they answered, "don't know" or simply failed to respond at all to many questions that the Douglases felt should have had a clear "yes" or "no" answer. Perplexed, the Douglases sent a list of follow-up questions. In addition to seeking clarification, they requested a copy of the inspection report prepared before the Vissers purchased the property. Diane Visser handwrote responses to the questions, but the Douglases continued to think the answers were inadequate. The Vissers never provided a copy of the inspection report. Nevertheless, the Douglases did not ask for any further clarification.

Dennis Flaherty performed a prepurchase inspection for the Douglases. He discovered a small area of rot and decay near the roof line, and caulking that suggested a previous roof leak in the area. Beneath the home, he found an area of rotted sill plate that sat below the section of water damaged exterior siding. A portion of sill adjacent to the rotted section had recently been replaced. Floor joists adjacent to the rotted area had been sistered. In his inspection report, he noted that those areas did not pose a structural threat, but should be repaired if the condition degraded rapidly.

The Douglases did not discuss the report with Flaherty or the Vissers. They purchased the house without discussing the issue of rot with the Vissers. The sale closed in April 2007. The parties agreed on a purchase price of \$189,000. The Douglases paid \$40,000 cash, and gave the Vissers a promissory note secured by a deed of trust for the remaining \$149,000. The total amount was due on August 1, 2008.

After purchasing the house, the Douglases began to notice a damp smell and a constant presence of potato bugs around the perimeter of the house and in the bathroom. In an effort to keep out the potato bugs, they caulked the baseboards in the bathroom. Eventually, they noticed that the ceiling tiles were gradually separating in the living room, master bedroom, and second bedroom.

Flaherty returned to inspect the home again. When he removed a ceiling tile, insulation and water came down from behind it. In response to what they found, the Douglases requested a bid from a mold abatement company. The company was unable to guarantee the removal of all mold because of the house's pristine mold-growing conditions. Without a guarantee, the Douglases elected to take no action.

In July 2008, the pay-in-full date was quickly approaching. Because it was uninhabitable, they requested an additional month to investigate the extent of the mold. The promissory note's due date was pushed back to September 1.

In the meantime, the Douglases removed the bellyband. They discovered substantial rot and pest issues underneath. In fact, there was virtually nothing behind the bellyband and they did not encounter any resistance in removing the boards. The Douglases defaulted on the promissory note.

In September 2008, Flaherty returned to the house a third time. He determined that the rim joists had 50 percent to 70 percent wet rot and pest damage that could not be seen from the crawl space without removing insulation. Similarly, he concluded the sill plate had 50 percent to 70 percent wet rot and pest damage. He opined that "installation of the siding was within the last two years and the extent of damage to the sill and rim joist could not have occurred since the installation of the skirt board siding. Therefore, whoever installed the skirt board siding would have known that structurally damaged portions of the framing would have been concealed." He further stated, "It is my professional opinion that the installation of the pink fiberglass insulation in the crawl space stud bays between the floor joists and firmly packed against the rim joists may have been installed to reduce the probability that damaged rim joists and sill would be discovered during a standard home inspection."

Another inspector, Kirk Juneau, also inspected the damage. He determined that a new trim was used on the house's exterior that is only intended for interior use. The trim covered and concealed damage, and had been installed within the previous two to three years. In the house's interior, he noted that where subflooring had been replaced the person who made the patches should have discovered the damage beneath. Beneath the house, he determined that some joist damage was visible, because it was not covered by insulation, and that once insulation was removed more damage was visible.

The Douglasses shut off the water, drained the lines, and turned off the electricity. They obtained a bid from a contractor who determined it would cost more to repair the home than to tear it down and rebuild.

The Douglasses sued the Vissers. They claimed fraudulent concealment, negligent misrepresentation, violation of the Consumer Protection Act, ch. 19.86 RCW, breach of contract, and violation of Terry Visser's statutory duties as a real estate agent.

Kelly Hatch, who assisted Visser with some of the repairs, testified that he had difficulty fixing the floors in the bathroom, because the wood was too soft to install screws. When he advised Terry Visser to rip out the plywood to inspect the joists underneath, Visser said he could not put any more into it and told Hatch to find a way to attach the wood. On the house's exterior, Hatch discovered that wood underneath the bellyband was rotted. Visser instructed him to cover it up with trim. Specifically, Visser said they could cover it in caulking, use a bunch of nails, paint it, and seal it. When Hatch nailed the trim up, it was so rotted that he could not get the nails to stay in. Visser himself testified that he added a new piece of wood to a rotted joist, although he asserted he could not see the rot.

Flaherty explained that the rot he discovered in the first inspection was "[n]ot necessarily" a sign that the building's whole sill plate was rotted. He testified that the concealed rot he discovered in his last inspection was the worst he had ever seen. Juneau testified that at the time of the Douglasses' purchase there was readily observable damage that warranted further inspection or inquiries. The trial court found that the Vissers discovered significant wood rot to the sill plate and rim joist, as well as to the floor joists. It determined that, instead of correcting

the defects, the Vissers made superficial repairs and concealed the damage. It ruled in favor of the Douglasses on all claims. The court awarded the Douglasses \$103,000 to tear down and rebuild the house, \$3,000 to cover the cost of inspections, \$1,500 in moving expenses, \$12,000 for emotional distress, and \$25,000 as treble damages pursuant to the Consumer Protection Act. It also awarded the Douglasses their fees and costs in the amount of \$49,838. It offset those damages against the principal and interest the Douglasses still owed on the promissory note. Judgment was entered for the Douglasses in the amount of \$24,245.

REVIEW of the CASE

When the trial court enters findings of fact and conclusions of law, review is limited to determining if the findings of fact are supported by substantial evidence and if the findings of fact support the conclusions of law. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the declared premise.

The Vissers challenge several of the trial court's findings that are central to its conclusions. Specifically, they argue that there is no substantial evidence to support findings that the Vissers discovered and concealed defects before selling the home, or a finding that the defects were unknown and undiscoverable to the Douglasses.

The trial court found:

During the course of renovating the house, the Vissers discovered significant wood rot to the sill plate and rim joist that connects the concrete foundation to the frame.

It further found:

Rather than correct these defects, the Vissers or their hired help made superficial repairs to the visible damage and covered up the rest.

Two inspectors independently concluded that extensive damage was covered up during the period of time that the Vissers owned the house. Flaherty determined that the damage could not have occurred after the repair work, and Juneau determined that damage beneath the flooring should have been discovered when the subflooring was repaired. Hatch corroborated the inspectors' reports. He testified that he and Terry Visser covered rot with new trim and new subflooring. The inspection reports, together with Hatch's testimony, amply support the trial court's findings that the Vissers discovered and concealed rot.

The trial court also found:

The defects were unknown to the Douglasses and were not discoverable by a careful and reasonable inspection.

When a buyer is on notice of a defect, it must make further inquiries of the seller. Here, Flaherty identified an area of rot and decay near the roofline, an area of rotted sill plate, and sistered floor joists. The Douglasses and their inspector were on notice of the defect and had a duty to make further inquiries. The Douglasses argue that "they had no idea that 50 to 70% of the sill plate and rim joist were destroyed" and that the area of rot that Flaherty discovered was not unusual. That, however, is the precise argument that was rejected in a different case. Once a buyer discovers evidence of a defect, they are on notice and have a duty to make further inquiries. They cannot succeed when the extent of the defect is greater than anticipated, even when it is magnitudes greater.

The Douglasses suggest, without citation to the record, that they did in fact make further inquiries, asserting that "[n]either a reasonable inspection, nor the Douglasses' reasonable Questions, put them on notice" of the extent of damage. (Emphasis added.) But, Nigel Douglas explicitly testified that after the pre-purchase inspection report, which was the source of notice of the defects, he did not ask the Vissers or Flaherty any questions about the rot that Flaherty identified. Instead, they were content to let the report speak for itself.

Prior to the inspection, the Douglasses asked follow-up questions to the Vissers' perplexing responses in the seller disclosure statement. But none of those questions expressly addressed the rot issue, and the Douglasses did not ask any specific questions about rot or the house's foundation. More significantly, both the seller disclosure statement and the Vissers' responses to the Douglasses' inquiries predate the pre-purchase inspection report. Inquiries made before the pre-purchase inspection cannot be construed as inquiries regarding the rot discovered during the inspection.

There is no evidence that the Douglasses made further inquiries once they were on notice of the defect. Further inquiry is not necessary where it would have been fruitless. While the Vissers' overt attempts to cover up the defects prior to listing the property and their pre-inspection evasiveness may support an inference, if not a conclusion, that such inquiry would have been fruitless, the trial court did not enter any such findings. Accordingly, despite the egregious nondisclosure and concealment by the Vissers, an essential element of each of the Douglasses' claims is not satisfied.

A claim for fraudulent concealment exists when:

- (1) the residential dwelling has a concealed defect,
- (2) the seller has knowledge of the defect,
- (3) the defect presents a danger to the property or health or life of the buyer,
- (4) the defect is unknown to the buyer, and
- (5) the defect would not be disclosed by a careful, reasonable inspection by the buyer.

Because the Douglasses were on notice of the defect and had a duty to make further inquiry, it can NOT be said that the defect was unknown to the Douglasses, that it could not have been discovered by a reasonable inspection, that the Douglasses justifiably relied on the Vissers'

misrepresentations, or that the Vissers committed an unfair or deceptive act that caused the Douglasses' injury.

The Vissers efforts in concealing the defects of the house they were selling are reprehensible, even more so because Visser is a licensed real estate agent. Nonetheless, the law retains a duty on a buyer to beware, to inspect, and to question. The Douglasses did not have a duty to perform exhaustive invasive inspection, or endlessly assail the Vissers with further questions. They merely had to make further inquiries after discovering rot, or at trial show that further inquiry would have been fruitless. The only evidence of when the Douglasses first learned of rot in the house is the report issued after Flaherty conducted his pre-purchase inspection. Despite that discovery, on top of the Vissers' previous evasive and incomplete answers and the Vissers' on-going failure to provide their own pre-purchase inspection report, either of which should have caused concern and further inquiry, there is no evidence that the Douglasses made any inquiries whatsoever after the inspection. They obtained no finding from the trial court that further inquiry would have been fruitless. The Douglasses' failure means they were not entitled to maintain these claims.

Applying this to your practice: If the seller has knowledge of material defects of the property for sale, this defect should never be concealed from the potential buyer. However, buyers must be on aware for potential defects. If something seems suspicious with a property, it is the buyer's responsibility to make further inquiries, inspect, and question the seller. Especially after receiving the pre-purchase inspection report that identifies issues with the property.

Risk Reduction Review Questions:

- 1) Which of the following should NOT be used by real estate agents for documentation?
 - a. Call logs
 - b. Emails
 - c. Written documents
 - d. All of the above can be used for documentation

- 2) True or false? Documenting transactions and communications can reduce liability, risk, and E&O premiums.
 - a. True
 - b. False

- 3) The duty of disclosure means to:
 - a. Document all transactions
 - b. Keep the client informed of all facts that might affect the transaction
 - c. Reveal only facts that are positive about the property in question to the client
 - d. None of the above

- 4) If the real estate agent is aware of _____, it is the agent's duty to disclose this information the client.
 - a. Any material defect known about the property involved in the transaction
 - b. Deficiencies in sales contract provisions, buyer's financing that may affect the ability for the buyer to purchase
 - c. Incorrect market value of the property, any interest or prospective interest the agent has in the buyer of the buyer's business
 - d. All of the above

- 5) True or false? Under most state laws real estate agents are only required to disclose favorable facts about a property to the client.
 - a. True
 - b. False

Answers can be found on page ____.

Course Review

In conclusion, avoiding risk as a real estate licensee has many moving components. It is critical to be able to avoid common violations such as misrepresentation and advertising violations. This can be made easier when you have systems in place for correct documentation within your business and when you are taking steps to make sure disclosures are being made completely and honestly. It is important to remember that your standards of practice set the tone for the success of your business.



Correspondence Course Affidavit:

By signing your name below, you hereby attest to the following:
I understand that I must personally complete the entire course. My work in this course will be based solely on my own efforts, unassisted by any unauthorized individual or resource. I understand that receiving unauthorized assistance will invalidate my course credit.

(Signature)

(Date)

(Printed Name)

Don't Risk It- Preventing Common Violations

Final Exam:

1. Which of the following is not one of the 6 duties required by the common law of fiduciary:
 - a. Loyalty
 - b. Confidentiality
 - c. Disclosure
 - d. Savings

2. A broker is permitted to represent both the seller and the buyer in the same transaction when:
 - a. The principals are not aware of such action
 - b. The broker is a subagent rather than the agent of the seller
 - c. Commission are collected from both parties
 - d. Both parties have been informed and agree in writing to the transaction broker representation

3. A broker helps a buyer and a seller with paperwork, but does not represent either party. This relationship is called:
 - a. Designated Seller Agency
 - b. Dual Agency
 - c. Transaction Broker Agency
 - d. Prohibited in all states

4. A real estate broker's responsibility to keep the principal informed of known material facts about the transaction is the duty of:
 - a. Care
 - b. Disclosure
 - c. Obedience
 - d. Accounting

5. Which of the following applies to a real estate broker acting as the agent of the seller:
 - a. Must promote and safeguard the seller's best interests
 - b. Can disclose the seller's minimum price
 - c. Can accept an offer on the seller's behalf
 - d. Should present to the seller only the highest offer

6. Which of the following applies to a real estate broker acting as the agent of the buyer:
 - a. Must disclose buyer's top price they will pay for property
 - b. Must disclose defects to all parties about buyer's ability to purchase
 - c. Must disclose only material defects the buyer inquires about
 - d. Must only write offers that are full price

7. Disclosure may include:
 - a. Material defects
 - b. Market value
 - c. Deficiencies of buyer's financing
 - d. All of the above

8. E&O stands for:
 - a. Errors and operation
 - b. Errors and omissions
 - c. Errors and outbound
 - d. Ears and omissions

9. E&O insurance is:
 - a. Liability insurance
 - b. Compliance insurance
 - c. Personal injury insurance
 - d. Auto insurance

10. Where should you display your company's mission and vision statements:
 - a. on your website
 - b. Prominently in your office
 - c. In your orientation materials
 - d. All of the above

11. What are the two foundational parts to avoiding risks:
 - a. GCI & ROI
 - b. Strengths & Weaknesses
 - c. Document & disclose
 - d. Opportunities & threats

12. How many types of misrepresentation are there?
 - a. 1
 - b. 2
 - c. 3
 - d. 4

13. What is misrepresentation?
 - a. A false statement or nondisclosure of material fact made with the intention of inducing some action by another party.
 - b. An advertisement that does not disclose the brokerage an agent is affiliated with
 - c. An advertisement that does not disclose who the agent is
 - d. Enticement or inducement

14. What is innocent misrepresentation?

- a. Enticement or inducement
- b. A representation of a material fact that the real estate agent didn't know to be true or false
- c. A failure to use reasonable care when ascertaining the truth of a material defect
- d. Intentionally misleading the party to induce them into a contract

15. What is negligent misrepresentation?

- a. Enticement or inducement
- b. A representation of a material fact that the real estate agent didn't know to be true or false
- c. A failure to use reasonable care when ascertaining the truth of a material defect
- d. Intentionally misleading the party to induce them into a contract

16. What is fraudulent misrepresentation?

- a. Enticement or inducement
- b. A representation of a material fact that the real estate agent didn't know to be true or false
- c. A failure to use reasonable care when ascertaining the truth of a material defect
- d. Intentionally misleading the party to induce them into a contract

17. Which of the following must occur to prove intentional misrepresentation?

- a. The representation was made
- b. The representation was false
- c. The purchaser did not know it to be false
- d. All of the above

18. Which of the following must be included in an advertisement?

- a. Company affiliation name prominently displayed;
- b. Office/ Brokerage name
- c. Truthful information
- d. All of the above

19. What is enticement?

- a. A motive or consideration that leads one to action
- b. To lead one down a path or lead astray
- c. Bias or prejudice resulting in denial of opportunity, or unfair treatment of a protected class
- d. A violation occurring in social media

20. All of the following except _____ could be an advertising violation:
- Discrimination
 - Inducement
 - Enticement
 - Call to action
21. What is inducement?
- A motive or consideration that leads one to action
 - To lead one down a path or lead astray
 - Bias or prejudice resulting in denial of opportunity, or unfair treatment of a protected class
 - A violation occurring in social media
22. Which of the following words is NOT allowable in advertising:
- Use of the Equal Housing Opportunity Logo
 - Reference to the number of rooms in a house
 - Reference to the race of potential buyers
 - Use of the licensee's phone number
23. What is discrimination?
- A motive or consideration that leads one to action
 - To lead one down a path or lead astray
 - Bias or prejudice resulting in denial of opportunity, or unfair treatment of a protected class
 - A violation occurring in social media
24. Which of the following language is allowable in an advertisement?
- "neighborhood great for retired people"
 - "home has expansive backyard for observing wildlife"
 - "home has a large garage that could be used for a man's workshop"
 - "Home is a great floor plan for a large family"
25. According to the Fair Housing Act, which of the following words ARE allowable in a housing advertisement?
- Words indicative of race
 - Words indicative of sex
 - Words indicative of religion
 - None of the above
26. Which of the following advertisements are allowable?
- Visit the new adult only apartment building!
 - Visit the new 4-story apartment building
 - Visit the new kid-free apartment building
 - Visit the new Christian friendly apartment building

27. What is documentation?

- a. Reducing your E&O premiums
- b. Filing documents in the correct order
- c. Involvement in a transaction
- d. Keeping record (documentation) of every transaction and communication

28. Which of the following is NOT a form of documentation?

- a. Call log
- b. Email
- c. Verbal conversation
- d. Written document

29. What is disclosure?

- a. Keeping the client informed of all facts that might affect the transaction
- b. Keeping documentation of transactions and communications
- c. Enticement or inducement
- d. None of the above

30. Which of the following must be disclosed during a transaction?

- a. Any material defect known about the property involved in the transaction
- b. Deficiencies in sales contract provisions, buyer's financing that may affect the ability for the buyer to purchase
- c. Other types of deficiencies such as an incorrect market value of the property, any interest or prospective interest the agent has in the buyer or the buyer's business
- d. All of the above



Course Evaluation Form

Name: _____

Course: _____ Completion Date: _____

On a Scale of 1 to 5 (1 being low and 5 being high) rate your instructor on the following:

Demonstrated knowledge of course content _____

Encourage feedback and questions _____

Responded to my questions quickly _____

Instructor's support of student _____

Instructor/student interaction _____

On a Scale of 1 to 5 (1 being low and 5 being high) rate the content & materials on the following:

Orientation was thorough and clear _____

Organization of content _____

Course objectives were clearly stated _____

Content was what I expected _____

Value of resource materials _____

On a Scale of 1 to 5 (1 being low and 5 being high) rate the delivery method on the following:

Satisfied with my learning experience _____

Course provided interactivity with instructor _____

Course provided interactivity with other students _____

Program met my needs _____

Degree of problems with self-paced instruction _____



Please answer the following questions in your own words:

How was the orientation session accomplished?

Who answered your questions regarding course content?

Were they able to sufficiently help you? If not, explain.

What suggestions do you have to improve this program?