

Communication-related issues

account for about 38 per cent of real estate malpractice claims

Most real estate lawyers will be surprised to learn that communications-related issues accounted for 37.5 per cent of real estate malpractice claims between 1995-2003.

The errors on communications-related real estate claims fall into one of three basic types: poor communications with a client; a failure to obtain a client's consent or to inform the client; or a failure to follow a client's instructions.

How do you avoid these types of real estate malpractice claims? Two things can help. One of the best ways is taking steps to educate your client about what will happen in the course of the transaction.

As a real estate lawyer you are intimately familiar with everything involved in a real estate deal. But remember, the purchase or refinancing of a home is something that most people go through only once or a few times in their lifetimes. Do not take for granted that your clients are familiar with the process, options, timing or costs.

Information pamphlet

One of the best tools to educate to your clients about real estate transactions is the *Working With a Lawyer When You Buy*

a *Home* pamphlet. Prepared by the Ontario Bar Association and the Law Society of Upper Canada, this pamphlet is an ideal educational tool for clients who are embarking on a real estate transaction.

This pamphlet will help you market your services and comply with your obligations under the *Rules of Professional Conduct*. It explains in lay-person terms the legal aspects of the purchase of a residential property and the role of the lawyer to protect a client's interest in that property. Lastly, it outlines the options available in terms of solicitor's opinion on title and title insurance.

View an online copy of the pamphlet, at www.oba.org/en/pdf/lawyer1.pdf. Hard copies to give out to your clients are available for a nominal cost at www.oba.org/en/pdf/workingwithalawyer_order.pdf.

Checklist

A file-opening checklist is a second tool that can help make sure you review all necessary information with your client, and at the same time, collect all the details you need to complete the deal.

A sample opening checklist for a refinancing transaction is available at www.practicepro.ca/refinancechecklist. This checklist was prepared by Stephen H. Shub. He uses it when handling refinance deals.

The checklist systematically walks you through the process of gathering the information that is necessary to prepare for a refinancing deal. It highlights the issues on which information should be sought from or provided to the client. In doing so it helps a lawyer complete an appropriate review and investigation as to the details of the transaction. To help you avoid being the victim of a fraud, it also includes questions that highlight the flags of fraudulent transactions (see page 16 of this magazine).

With a bit of extra effort on your part you can prevent many communications-related malpractice claims on real estate transactions. Consider being more proactive in educating clients on what will occur in the course of their transaction, and in using an appropriate checklist to ensure all necessary steps and investigations are completed by you and your staff.

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