

10 Things To Do and Not Do in a Real Estate Transaction

1 As the listing agent, DO have the seller sign and verify the information submitted to the MLS. Protect yourself and have the seller sign the MLS report before you submit the information to your MLS.

2 Telephone Call Signatures – DO NOT DO IT. The buyer and/or seller should always sign legally binding documents such as the purchase agreement or counter-offers. The agent's signature for the buyer and/or seller followed by the words "per telephone call" is not sufficient as a legally binding document and will not stand up in court. Get a signature! All aspects of a real estate transaction are critical. The buyer and/or seller need to sign all necessary documents.

3 DO get a release agreement. If you agree to a settlement or condition of the property, contact risk management to obtain an appropriately drafted Settlement and Release Form. Have both parties sign the form. Sellers often credit buyers for a condition of the property. For the seller's protection, have the buyer sign the Settlement and Release Form stating that a settlement for X amount of dollars was agreed on for X conditions. When the form is used, the buyer is on notice that a dollar amount has been agreed on; therefore the seller can not be held liable for damages (for the specified condition or conditions) at a later date.

4 Agents – DO your inspection. Go to the property. Even if the house is flawless, find something to write in the agent's portion of the TDS confirming your visual inspection of the property. Do not write "Buyer should get physical inspection" as the statement fails to prove that you actually inspected the property.

5 DO NOT go outside of your profession. If you see a crack in the concrete slab, simply write, "Crack in concrete slab" DO NOT try to guess what caused the crack. Do not perform inspections of inaccessible areas such as roofs, attics, and crawl spaces. Your job is to view accessible areas. If you represent the buyer and are advised that an issue may exist within an inaccessible area such as the roof, attic or crawl space, recommend to the buyer, in writing, to have the appropriate professional inspect the condition(s).

6 Sellers – DO have the buyer get a professional inspection. When selling a property, a condition of sale should include that the buyer have a professional home inspection completed by an ASHI or CREIA certified home inspector. DO NOT suggest a specific inspector. The only requirement should be that an ASHI or CREIA certified inspector be used. Inspectors from these agencies are held to a higher standard. DO NOT let the buyer skip the home inspection. Defects or conditions of the property that arise later, may come back to haunt the seller because it was not addressed before the transfer of property.

7 DO use a 3-step disclosure process. If you are making a material representation as to the condition of a property and are not sure that the statement is factual. Use the following process in written form. For example, if your seller represents that a new roof was installed by a licensed contractor 5 years ago, do the following:

1st: Identify the source of the statement.

2nd: Disclaim verification and/or accuracy and validity of the third-party statement.

3rd: Urge the buyer to independently confirm the statement. Under this example, the disclosure would state:

"Per seller, new roof was installed by a licensed contractor 5 years ago"

"Agent has not, nor shall he/she verify seller's statements as to the roof"

"Buyer is urged to perform an independent investigation to confirm seller's statements as to the roof"

8 DO consider the appropriate time frame for Notice(s) to Perform. The Notice to Perform aspect of the purchase agreement is a very potent clause. If the buyer agrees to the standard 24-hour notice period in the purchase agreement, it could come back to haunt the buyer and his agent. For example, if the standard 24-hour notice is stated in the Notice to Perform, the buyer and his agent may consider removal of the contingency and default under this time period. When representing the buyer, consider using a longer period such as 72 hours.

9 DO use the appropriate form for increased deposits subject to Liquidated Damages Clause. The Liquidated Damages Clause in a residential purchase agreement only applies to the initial deposit. If the seller wants the buyer to increase the deposit, subject to the Liquidated Damages Clause, the purchase agreement mandates that the parties use the CAR-RID form. The higher the amount of the deposit that is subject to liquidated damages, the greater the protection to the seller. Similarly, the lower the amount of the deposit subject to liquidated damages, the less money the buyer stands to lose if they fail to close the transaction.

10 DO call Risk Management. As we all know, several things can happen in the course of a transaction. If you face any situation that you are unsure of, do not hesitate to place a call to risk management. The call may take as little as 5 minutes and can save you several months of litigation, as well as the payment of your deductible.

PO Box 29502 #69121 Las Vegas, NV 89126

P: 858.618.1648 | F: 858.618.1655 | info@cresinsurance.com

Visit cresinsurance.com