

What Risk Management Is and How We Can Help You

We want to hear from you as soon as you think a dispute or claim is brewing. Client discontent can be the first sign the transaction is not going as expected. You do not need to wait for the issue to involve you — early intervention can help prevent a claim! Involving the CRES Risk Management attorneys early in an issue or dispute can help come to a resolution before it becomes a claim.

Our curated panel of experienced real estate defense attorneys has been defending real estate professionals for years.

Simply call or email the CRES Risk Management department, and the team will arrange for an attorney to call you back within four business hours. 📞

Risk management services include:

- » **Phone consultations** on matters related to real estate transactions, general questions, etc.
- » **Contract review** on select documents.
- » **Attorney letters** — our experienced team drafting letter content.
- » **Sample documents** of drafted releases, addendum/supplements.
- » **Webinars** to stay current on claim trends and prevention and best practices.

Some exclusions and limitations:

- » Risk management provides legal advice and answers questions with the objective of preventing claims.
- » Risk management services are available for active CRES errors and omissions (E&O) insureds providing an insured service.
- » Risk management is for real estate-related questions — not for employment issues or legal assistance that does not fall within insured services.
- » Risk management attorneys can give general advice regarding evictions, but they cannot draft documents and/or assist with an actual eviction.
- » Risk management services provide legal guidance only for CRES insureds and not their clients, prospects, etc.
- » Calls are limited to up to thirty minutes per issue. Additional time can be authorized for special circumstances and upon attorney recommendation.
- » CRES risk management has the right to limit call times if it believes the matter has been resolved or contained.
- » Insureds may choose to retain CRES attorneys outside of the risk management program. The insured and attorney create the arrangement. CRES is not involved in arrangements outside of risk management. CRES insureds are responsible for establishing rates, payments, retainer agreements and all costs and fees associated with retaining counsel outside of CRES' risk management services.

Serving the Real Estate Community Since 1996.

Real estate firms, brokers, agents,
appraisers, property managers
and mortgage brokers

For more information contact an
account executive at 858.618.1648
or email ggb.lv2.cres.custsvc@ajg.com.

cresinsurance.com

CA License No. 0783129 For a list of license numbers by state, visit us online.

See reverse side for 10 Transaction Do's and Don'ts



Safe. Simple. Smart.



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 Do not do telephone call signatures. 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 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 cannot 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 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 of an issue that 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 three-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 five years ago, do the following:

1. Identify the source of the statement.
2. Disclaim verification and/or accuracy and validity of the third-party statement.
3. 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 five 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 disclose; agents and sellers must disclose what they know. If you have to ask yourself, "Should I disclose?" the answer is **yes**. Don't use generalized language like, "everything updated" or "new." Follow up conversations in writing and consider using "read receipt" when emailing, so you know the recipient received your message. Use the appropriate subject line in an email, so the content is relevant to the subject in the email. Keep text threads and emails!

9 Do consider the appropriate timeframe 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.

10 Do call risk management. As we all know, many things can happen in the course of a transaction. If you face any situation you are unsure of, do not hesitate to call CRES risk management. The call may take as little as ten minutes and can prevent a claim.

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