

The Power of Ten: Reminders for Missouri Real Estate Agents and Brokers

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This week my youngest son turns ten. It's a big event – just ask him. Which is why I wanted to celebrate his first decade on Earth in my blog post for the professional liability team. Here are ten (get it) practical reminders for Missouri real estate brokers and agents as the 2021 spring market heats up:

1. Form contracts for residential and commercial deals are great. But, if your client elects not to populate a field and leave it blank, that can lead to a contractual ambiguity. They are costly to fix in litigation. Thus, always remember to fill them in, at least with a brief explanatory phrase or notation "N/A", or offer a blanket statement in the special terms section which says something like, "All fields left blank were done so intentionally and do not apply."
2. If you are representing a seller, know what you're selling. If you're representing a buyer, know what you're buying. This impacts what information is placed on the first page of the contract itself. Be as precise as you can. And, know that title agents and examiners will use this to begin document preparation and searches on their end. This sounds simple. But, it's a cold, cruel world out there. Litigation has been filed over this issue alone.
3. If you don't know exactly what you are buying or selling, consider a survey. Especially if neighboring structures or improvements suggest encroachment upon a visual inspection.
4. Encourage residential buyers to investigate the state of lateral sewer lines on the property, any municipal plans which offset or subsidize the cost of replacement and factor that in to purchase price during the inspection period. They will thank you later.
5. Keep track of communications and communicate what you know to be true, not what you hope to be true. There will always be another deal to close. Your E/O carrier appreciates your conservative approach.

6. Maintain and save records. If litigation is threatened or initiated, counsel will ask if your office placed a “litigation hold” on your files to preserve their native form. Spoliation - the destruction or significant alteration of evidence is frowned upon.
7. As more of you work remotely since the COVID-era began, protect your electronically stored information and electronic money transfers (e.g. wires, ACH, escrow accounts). Whomever was the cause in fact of any misdirected payments will likely shoulder or share in the responsibility for its misdirection.
8. More buyers are placing properties under contract without ever having visited the home or building in person. Consider amending the contract to extend inspection periods to afford your clients an opportunity to attend them in person. Or, consider a rental period if the property has sat on the market for some time and your buyer needs to relocate immediately.
9. It may sound silly, but confirm your buyer has the authority to buy and your seller has the authority to sell. This issue comes into play where buyers and sellers are corporate entities, trusts or estates. Doctrines manufactured by courts (“good faith” or “innocent purchaser” doctrine) and statutes created by your legislature (see e.g. Mo. Rev. Stat. § 351.395) are in place to protect certain parties to disputed real estate transactions.
10. If you aren't a lawyer, don't practice law. That's why we're here to help.

Happy hunting. And, happy birthday, big guy.