

## Acting Against the Advice of the Broker

### **Does a real estate licensee have a duty to advise a client?**

A real estate licensee has a fiduciary duty when dealing with a client. In appropriate circumstances you must counsel and advise your client. What if the client ignores your advice? What do you do then?

### **Not all Advice is the same.**

Some advice concerns are recommendations that a licensee suggests to a client to attempt to maximize the client's bargaining position. Some advice concerns are issues that have potential serious legal implications. An example of the former would be a recommendation that a seller client freshly paint the property or remove clutter to improve the showings. A buyer client may be advised not to discuss preferences with the listing agent. On the more serious side, a seller client might want to allow a buyer to move in early. A buyer client might think about removing contingencies without having seller disclosures.

### **Document anytime advice is ignored. Document with a follow-up letter for more serious issues.**

Whenever a real estate licensee's advice is rejected, at the very least the licensee should document for the file the advice that was given, the date discussed and the client's refusal to comply. In the event of a discrepancy later, contemporaneous notes can be useful to trigger memories and provide credibility. For the more significant issues, contact the clients in writing to inform them of the danger to them when ignoring your advice.

### **Use Acting Against the Advice of Broker letter from C.A.R. or your own broker to Emphasize the Importance of Contacting Counsel before ignoring your advice.**

C.A.R. has prepared letter templates that address common situations where serious matters are being considered by a principal notwithstanding the licensee's advice to the contrary. These letters can be found in your zipForm® account under the Library Forms menu. Look for C.A.R. Sample Letter Library (CARSL).

For seller-clients the pre-printed language addresses the following and other items can be added:

- failure to make agreed-upon repairs
- refusal to permit agreed-upon inspections
- allowing the buyer to move into the property prior to close of escrow
- allowing the buyer to make repairs or renovations prior to close of escrow

For buyer-clients, the pre-printed language addresses the following and other items can be added:

- making offers with no or limited contingencies
- removing contingencies early or without required disclosures from seller
- failing to investigate the property
- closing escrow without receiving reports or disclosures
- making multiple offers with the intent and ability to only follow-through with one
- making an offer with an escalation clause promising to pay a certain amount more than any other offer received