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COMMENTARY

During the NAR Leadership Summit in Chicago last week, incoming NAR president Al Mansell shared his thoughts about REALTORS® being more involved with family. He announced the creation of a new program called FamilyTime, designed to show Realtor members how to spend more time with their families. You will hear and see more about this program at our Annual Convention in Savannah in just ten days. The program is a response to a poll showing that 40 percent of members feel their work interferes with their family time either “frequently” or “very frequently.” The survey also showed that 35 percent of members said they do not have enough time to spend with their families and 21 percent said they often are not able to fulfill family commitments. On a more positive note, 55 percent of those polled said they found it easier to work around family schedules as a real estate professional than in more typical 9 to 5 jobs. Ask yourself what YOU VALUE MOST? Is family really important to you? “Where your treasure is, there your heart will be also”.

BUSINESS & ECONOMIC NEWS

S.C. HOMEOWNERSHIP LICENSE PLATES TO SUPPORT HABITAT

A bill (H.B. 4938) awaiting Governor Mark Sanford's signature will allow the South Carolina Association of REALTORS® to work with the state's Department of Motor Vehicles to design a "Homeownership, the American Dream" license plate.

Once signed into law, the \$95 cost (for every two years) will be used to support Habitat for Humanity and other organizations that help make homeownership a reality for Americans, says Nick Kremydas, vice president and general counsel for the South Carolina Association of REALTORS®.

The license plates can be used by owners of private passenger-carrying motor vehicles or

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light pickups having an empty weight of 7,000 pounds or less and a gross weight of 9,000 pounds or less and registered in the owners' names.

Kremydas expects the governor to sign the bill into law and anticipates that the plate will be available in early 2005.

REAL ESTATE SALES-KILLERS: WORDS THAT CLIENTS HATE

Subtle word changes can have a big impact on your success rate with clients, and there are a few phrases out there that are guaranteed sales-killers. People are constantly responding to your words with positive or negative emotions. Create too many negative emotions and customers will pull away from you. You may not even be aware of negative phrases you've used, so we're going to point them out to you.

Here's sales-killer No. 1: "I can't," as in "I can't find a home in that neighborhood in your price range." Better: "I'd like to expand our search to other neighborhoods to find something that meets your budget. Is that ok?"

The first phrase is negative—a downer, a conversation-killer. Always substitute "I choose to," or "I'd like to," in place of "I can't." It keeps you thinking about your options and it makes your client feel hopeful and empowered. Here are a few other phrases to watch out for:

"Here's the problem." Customers don't want to hear your problems; they want to know what you are going to do to help them. Substitute words like challenge, obstacle, or opportunity. These words imply action, as in "This is our challenge—we need to fix up this house for sale on a small budget! Let's talk about where to start."

"It's not my fault." This phrase is the quiet killer, because you probably don't say it out loud to your clients. You just think it. They hear you anyway. When things go wrong, forget whose fault it is. Instead, focus on the solution by affirming, "I am totally responsible for what I do next."

"I'll try." The phrase is heavy with doubt. It gives customers the feeling that you will not be able to help them. Instead use "I will..." If you aren't sure you can give the client what they are asking for, such as a quick sale at a high price, explain what you will do and for how long. Then explain the client's options if there are no offers after a few weeks.

"But..." This word is often a hidden "I can't," as in "We'll market your property at this price but I can't guarantee it will sell." Instead, substitute the word "and," as in "I will market your property at this price for four weeks, and if we get no offers, I'm going to ask you for a price adjustment."

"I need..." Customers hire you to help them with their needs. They don't want to hear about yours. Instead of saying, "I need to get this paperwork signed by Thursday," say,

"When is the soonest you can have this back to me? The deadline is Thursday."

"You should..." This phrase kills marriages as well as sales. You might want to say,

"You should paint the exterior and remove all these dead shrubs." Instead, empower the customer by asking, "What do you want to do to spruce up your home for sale?"

"You have to," as in "you have to list at such and such price if you want to get any activity." This phrasing makes people mad, because it takes away their control. Try instead, "You can position this property anywhere in the market that fits your needs, considering that homes sell faster at one price compared to another."

Here are some phrases that apply specifically to real estate situations:

"Taken off the market" versus "rejected by the market"

When working with expired listings, agents often say, "I noticed your home has been taken off the market. What if you said instead, "your home was rejected by the market"? No one wants to be rejected. You are prompting an emotion that drives the conversation to the desired outcome. This phrase also works for sellers who want to price too high, as in, "What do you want to do if the market rejects your price?"

"Existing home" versus "established home"

Consider this common buyer objection: "We're thinking of building a new home instead of buying an existing one." The word "existing" evokes little emotion; so in your response use the word "established home" to evoke an image of a home with the charm that comes with finishing touches and full landscaping.

"Lower your price" versus "reposition your home in the marketplace"

When you call a seller to suggest a price reduction, you put him on the defensive. The alternative, "reposition your home in the marketplace," puts the focus on market signals and leaves the seller free from blame.

The key in all these phrase choices is selecting words that open up possibilities instead of closing them down. As long as we feel we have options, we feel energized in taking the next step in a transaction or any other activity in life. That's the power of word choice!

By [Howard Brinton](#) of Inman News

[BUSH, KERRY WEIGH IN ON HOUSING ISSUES](#)

The National Association of Home Builders, a trade association whose members employ about 8 million workers, asked leading presidential candidates, President George W. Bush and U.S. Sen. John Kerry, D-Mass., about their political stances on various housing issues.

Their [responses](#) were featured this week in an edition of Nation's Building News Online, the association's weekly online news publication. The following are excerpts from those questions and responses:

NAHB: Housing has been a major contributor to the nation's economic growth in recent years. Looking ahead, how critical is housing's performance to the nation's economic recovery? What specifically would you do to ensure that housing production and home sales continue to lead the economy forward?

BUSH: Home ownership rates have soared to record levels in recent months, further evidence of a growing economy. By lowering taxes and laying the foundation for companies to create new jobs, we are contributing to the strength of the housing market and the economy as a whole. Tax relief has left Americans with more money to put toward buying a home or paying the monthly mortgage. In addition, I have pursued an aggressive home-ownership agenda that includes the goal of creating 5.5 million new minority homeowners by the end of the decade through a variety of proposals to assist low- and moderate-income families.

To meet this goal, I signed into law the American Dream Downpayment initiative, which authorizes \$200 million a year to assist an estimated 40,000 low-income families with downpayment funds. In this year's budget, I proposed the Zero Downpayment Initiative, which would eliminate the statutory requirement of a minimum 3 percent down payment for Federal Housing Administration-insured single-family mortgages for first-time home buyers. Preliminary projections indicate that the new FHA mortgage product would generate about 150,000 home buyers in the first year alone. I also proposed to triple funding for self-help programs that offer homeownership opportunities to families willing to contribute their own "sweat equity," and I have increased funding for housing counseling programs.

KERRY: Housing has been a pillar of strength for our economy, even while many other industries have been experiencing difficulties. We must ensure that our housing sector remains strong while we work to create new jobs and growth in our economy.

As Ranking Member of the Senate Banking Committee's Housing Subcommittee for a number of years, and as a current member of the Senate Finance Committee, I understand the important role housing plays in developing our economy. That is why I have worked to promote the whole spectrum of housing opportunities, including: the preservation of existing affordable housing; the construction of new affordable housing; protecting and expanding the Low Income Housing Tax Credit; introducing legislation to increase home ownership through the rehabilitation of existing homes and the construction of new homes; protecting and expanding the multifamily and single-family FHA programs; and producing elderly and assisted housing.

NAHB: Where do you stand on the debate over how best to regulate Fannie Mae and Freddie Mac?

BUSH: They are in need of a regulatory structure that is worthy of their considerable size, complexity and importance. And they must remain focused on their special public mission. My Administration is committed to GSE reform consistent with these twin goals: increasing homeownership opportunities for low- and middle-income Americans and ensuring the long-term strength and resiliency of the housing finance system. I have called on Congress to create a new regulatory regime that establishes a single financial regulator with the full range of supervisory and enforcement powers that are comparable to other world-class financial regulators.

KERRY: I support maintaining the GSEs' government-sponsored status because housing holds a special place in both our economic and social policy in this country. I am, however, concerned about recent governance and accounting problems at Freddie Mac. I would work with Congress and the top experts to carefully examine these issues and develop legislation that provides for strong, effective supervision and regulation of Government Sponsored Enterprises within a framework that assures their safety and soundness. We must also increase the focus of GSEs on affordable housing.

NAHB: While the housing market has performed very well in recent years, it is becoming increasingly difficult for many first-time buyers and working families to buy or rent homes in the communities where they work. How do you view today's housing affordability problem, and what specifically would your Administration pursue to help close the gap between those who can afford a home and those who can't?

BUSH: I have proposed a five-year Single-Family Affordable Housing Tax Credit. The tax credit is for up to 50 percent of the costs of constructing or rehabilitating affordable homes, provided they are sold to home buyers with incomes of not more than 80 percent of area median income. Tax credits awarded in the first five years will result in an additional 200,000 affordable single-family homes becoming available through construction or rehabilitation. I signed into law the American Dream Downpayment initiative, which authorizes \$200 million a year to assist an estimated 40,000 low-income families with down-payment funds.

In this year's budget, I proposed the Zero Downpayment Initiative which would eliminate the statutory requirement of a minimum 3 percent down payment for Federal Housing Administration (FHA)-insured single-family mortgages for first-time home buyers. Preliminary projections indicate that the new FHA mortgage product would generate about 150,000 home buyers in the first year alone.

KERRY: Today, too many low- and moderate-income families living in urban and rural areas across our nation have not been able to share in the dream and benefits of home ownership due to the lack of available housing or the high cost of the housing that is available. I have made a number of proposals in the past to increase home ownership.

For example, I have previously introduced legislation, the First Time Homebuyer Affordability Act, which would allow families to borrow up to \$10,000 from their IRAs (or from their parents' IRAs) for a down payment on their first home without paying any taxes. I have also introduced legislation to encourage the construction and rehabilitation of for-sale homes that will both create new opportunities for low-income home buyers and help revitalize distressed communities. Finally, I have strongly supported efforts to increase FHA loan limits to help

more families become first-time home buyers.

Source: Nation's Building News Online, official online weekly newspaper of the National Association of Home Builders.

JOB GROWTH TO FUEL REAL ESTATE SALES

In a call sponsored by the [Homeownership Alliance](#), the nation's top housing economists told financial analysts that the second half of this year will bring continued success for housing and home ownership in spite of higher interest rates.

The economists participating on the call represent the charter members of the Homeownership Alliance: the Independent Community Bankers of America, Freddie Mac, Fannie Mae, the National Association of Home Builders and the National Association of Realtors.

David Lereah, chief economist for the National Association of Realtors, explained that the rise in interest rates is an expected and necessary part of economic recovery. "The reason interest rates are slightly higher is that we are in a growing economy rather than dealing with inflationary pressures. This is good news because corporate profits are up 40 percent from two years ago, so companies are spending and jobs are being created," he said. "In the housing markets, this is largely neutralizing the effects of modestly higher interest rates."

Paul Merski, chief economist for Independent Community Bankers of America, agreed with Lereah's optimism. "Bankers continue to report steady and solid loan business for home construction and sales," he said. "The housing sector of our economy may well be on track for another record-setting year, which is not surprising given interest rates are still at very attractive levels for consumers."

According to the National Association of Home Builders, although the year ahead may bring its ups and downs, the housing market will certainly hold out to see positive year-end results. "Home-building is likely to recede from the robust second-quarter pace as interest rates move upward, but records most likely will be posted in 2004 for single-family starts and sales of new homes," said Dave Seiders, chief economist for NAHB. Seiders went on to point out that, although the apartment market is facing record-high rental vacancy rates (a counterpart to record-high home-ownership rates), a strong condo market is providing good support to multifamily housing production.

Although all the economists expressed positive expectations, some were more guarded in their optimism. According to David Berson, chief economist for Fannie Mae, while there is no danger of a national home-price decline, there are a few regions across the country where rapid home-price increases have pushed affordability down to lows not seen since the late-1980s. "There is an increasing risk of price declines in some of those areas, especially those in which job growth has been most anemic," Berson said. "However, ongoing economic growth (the weaker-than-anticipated employment reports for June and July notwithstanding), mortgage rates back under 6 percent and near-record mortgage applications for purchases suggest that home sales will continue to be at, or near, record levels for a while. For all of 2004, new records for home sales will be easily reached. Home prices also continue to grow strongly - perhaps too strongly in some areas."

Frank Nothaft, chief economist for Freddie Mac, said home equity lending will increase as refinance activity decreases. "Refinance volume has fallen dramatically and will remain a relatively small share of the mortgage market into 2005. Refinance represented about 50 percent of loan volume in the first half of this year, but has since fallen below 40 percent of new applications and should continue to slow through next year to a share around 30 to 35 percent," he said. "Home equity lending will be up as that will be the preferred loan product to convert home equity into cash."

The Homeownership Alliance, based in Washington, D.C., is a coalition of more than 15 organizations committed to ensuring support for the American housing system. Members include Consumer Federation of America, The Council of Insurance Agents & Brokers, The Enterprise Foundation, Fannie Mae, Freddie Mac, Habitat for Humanity International,

Independent Community Bankers of America, Independent Insurance Agents & Brokers of America, Local Initiatives Support Corporation, National Association of Federal Credit Unions, National Association of Hispanic Real Estate Professionals, National Association of Home Builders, National Association of Mortgage Brokers, National Association of Real Estate Brokers, National Association of Realtors, World Floor Covering Association, National Bankers Association, National Council of La Raza, and National Urban League.

Source: Inman News

SUPPLY OF HOUSES FINALLY RISING TO PARTS OF U.S.

The number of houses on the market is finally rising in some parts of the U.S. where shortages have led to soaring prices. The new supply should help soften price increases, and some economists say it may eventually bring prices down in some places where they have risen at double-digit rates in the past few years.

The NATIONAL ASSOCIATION OF REALTORS® reports that the U.S. housing inventory is still tight, at 4.3 months, down from 4.7 months a year earlier, but some markets have seen a noticeable boost in supply.

The inventory of homes for sale in Orange County, Calif., for instance, rose from 1.4 months in April to 7.5 months in July; and year-over-year gains have hit the double digits in more than a dozen New Jersey counties as well as in Boston.

What University of California at Los Angeles economist Edward Leamer calls "a day of reckoning" is expected to arrive slowly, mainly because homeowners would simply stay put if prices dramatically fell.

While some experts worry about appreciation outpacing incomes and rents, NAR chief economist David Lereah and other industry insiders believe that low interest rates will continue to fuel the housing boom.

Source: Wall Street Journal

HUD TO SELL MORTGAGE LOANS

The U.S. Department of Housing and Urban Development has announced plans to hold a competitive, sealed-bid sale of unsubsidized multifamily and healthcare mortgage loans that do not carry insurance from the Federal Housing Administration.

Bids are due on Sept. 15, with sales awarded by Sept. 17 and closings conducted on Sept. 22. According to HUD, the loans will be grouped into several pools according to characteristics such as performance, property type, location, and lien position.

Qualified bidders will receive information on the different types of loans offered in the Bidder Information Package, and they will be allowed to bid for more than one pool.

Source: Washington Times

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ASSOCIATION NEWS

THANK YOU FOR HELPING VICTIMS OF HURRICANE CHARLEY

REALTOR® victims of hurricane Charley thank you for your contributions to help them in the time of need. Hats off to REALTORS® and Associations for contributions totaling \$12,692 as follows:

- Aiken Board of Realtors - \$1,000
- Anderson Association Realtors - \$50
- Charleston Trident Association Realtors - \$100
- Coastal Carolinas Association Realtors - \$525

- Grand Strand Board Realtors - \$300
- Greater Columbia Association and Realtors - \$3,097
- Greater Greenville Association and Realtors - \$770
- Hilton Head Area Association and Realtors - \$1,550
- Kershaw County Board Realtors - \$100
- Realtor Association of the Greater Pee Dee Realtors - \$100
- SCAR and Staff - \$5,100

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TECHNOLOGY NEWS

BROKER LISTINGS LAND AERIAL MAPS

RealBird expands mapping features for large amounts of listings

DonationChannel has launched a new "on-the-fly" street address mapping capability for its Enhanced RealBird Aerial Maps Viewer, a personalized GIS (Geographical Information Systems) tool for real estate agents.

Agents can add the RealBird Viewer to their Web site, link it to any number of listings, display local schools information, view parcel lines and more. The new, "on-the-fly" address mapping capability extends the use of the Enhanced Viewer for large amounts of listings, making it possible for brokers, Multiple Listing Services and IDX feed integrators to add aerial maps to listings.

The service covers the continental U.S. and is fully Web-based, with no extra software to download. The price for individual agents is \$125/year, and for brokers and MLSs it varies depending on volume.

In addition to on-the-fly linking, the Enhanced RealBird Viewer includes manual linking to property listings, embedded schools database with automatic Google links to school information, embedded USGS landmarks database and full color aerial maps.

RealBird was created by DonationChannel in mid-February as a way to link up real estate agents and home-buying parents of school-aged children, said Gabriel Gross, founder of DonationChannel. DonationChannel, a Redwood City, Calif.-based company founded in May 2003, solicits charitable donations for elementary schools.

Source: Inman News

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LEGAL NEWS

NEW LAW AFFECTS METHOD FOR PAYING UNLICENSED INDIVIDUALS

As of January 1, 2005; license law in SC will change.

Here are some answers to questions about paying "Unlicensed Individuals":

“Yes” to paying Referral Fees to Out of State Licensees;

“Yes” to paying your Unlicensed Assistant;

“No” to paying Unlicensed Individuals for Referrals;

“Yes” to paying Rebates to your Buyers and Sellers:

On January 1, 2005; the SC Real Estate License Law will change. Some forward thinking REALTORS® are already looking at the law and asking serious questions about how the new law will affect the way that they do business.

Governor Sanford signed the new real estate license law on April 29, 2004; and it goes into effect on Jan. 1, 2005.

One section of code that has many REALTORS® interested in the future is the section on paying a “commission” or “compensation” to an unlicensed individual.

Let’s discuss this section of the SC Code (how it functions now, and how it will function as of Jan. 1, 2005).

Whenever you analyze the SC Code regarding real estate, it is important to remember that the SC Real Estate Commission has stated that it will view the law so as to favor the real estate consumer.

Clearly, one main idea from SC real estate law is apparent. That being that licensing people who conduct the real estate transaction protects the public and is in the public’s best interest.

Below is the code section and the “stricken through” section is the part of the law that goes away as of Jan. 1, 2005.

SC 40-57-150 INVESTIGATIONS AND DISCIPLINARY ACTION

(11) pays a commission or compensation to an unlicensed individual for conducting activities requiring a license as defined in this chapter;

Additionally, the following code section remains unchanged:

SECTION 40-57-180. Powers and duties of department and commission.

(A) The department may not be involved in the resolution of disputes between licensees over the payment or division of commission.

(B) A resident licensee may pay a part of his commission on a cooperative basis to a licensee of another state or jurisdiction if that licensee does not conduct in this State any of the negotiations for which a fee, compensation, or commission is paid.

First, let us examine paying out of state licensees a referral fee.

The law has not changed for paying an out-of-state licensee a referral fee. It is legal now and will be legal January 1, 2005.

Under any interpretation, it was not legislative intent to end referral fee procedures for out-of-state licensees making referrals to SC real estate licensees. It was legislative intent to end the paying of illegal "bird dog" fees to non-licensees and to allow LLR to enforce this rule more easily against violators.

This interpretation fits with the overall philosophy of the SC Real Estate Commission which is to benefit the real estate consuming public. Certainly, laws allowing incentives to further the leads referral system to in-state licensees who can best represent the client and are knowledgeable of SC real estate laws are in the best interest of the real estate consumer.

Whereas ending the incentive for unlicensed individuals to interact with the real estate consumer certainly is in the best interest of the consumer.

Second, let us examine paying your Unlicensed Assistant.

The new law limits the Unlicensed Assistant's function in SC:

SECTION 12. Section 40-57-135 of the 1976 Code, as last amended by Act 285 of 2000, is further amended by adding at the end:

"(G) For all types of real estate transactions, including leases and sales, an unlicensed employee of the owner or an unlicensed individual working under the supervision of a licensee may not:

- (1) discuss, negotiate, or explain a contract, listing, buyer agency, lease, agreement, or other real estate document;
- (2) vary or deviate from the rental price or other terms and conditions previously established by the owner or licensee when supplying relevant information concerning the rental of property;
- (3) approve applications or leases or settle or arrange the terms and conditions of a lease;
- (4) indicate to the public that the unlicensed individual is in a position of authority which has the managerial responsibility of the rental property;
- (5) conduct or host an open house or manage an onsite sales office;
- (6) show real property;
- (7) answer questions regarding company listings, title, financing, and closing issues, except for information that is otherwise publicly available;
- (8) discuss, negotiate, or explain a contract, listing, buyer agency, lease, agreement, or other real estate document;
- (9) be paid solely on the basis of real estate activity including, but not limited to, a percentage of commission or any amount based on the listing or sales compensation or commission;
- (10) negotiate or agree to compensation or commission including, but not limited to, commission splits, management fees, or referral fees on behalf of a licensee;
- (11) engage in an activity requiring a real estate license as required and defined by this chapter."

SCAR recommends that all of your assistants become licensed so that their utility is maximized.

That being said, some assistants may choose to remain unlicensed for a variety of reasons despite SCAR's recommendation.

Number 9 clearly states that so long as the unlicensed assistant is not paid SOLELY on that basis of real estate activity (including percentages of commission or compensation) then the law is complied with and no sanctions will attach.

Because this section specifically addresses paying a portion of a commission to "unlicensed employees" or "unlicensed individuals working under the supervision of a licensee", it is clear that the legislative intent was that the later reference to "unlicensed individual" does not equate to "unlicensed employees" or "unlicensed individuals working under the supervision of a licensee."

Under the old language, paying a commission or compensation to an unlicensed individual was legal. Removing the phrase at end of that statement does not change the meaning nor intent so as to make illegal paying your unlicensed assistant a commission or compensation based on real estate activity.

So long as you pay that unlicensed assistant other forms of payment so that they are not paid SOLELY as a commission or compensation based on real estate activity, the law is complied with and no LLR sanction should attach.

Since it was legal to pay an unlicensed assistant prior to January 1, 2005; the removal of the last part of Number 11 does not suddenly make it illegal to pay unlicensed assistants since the actions they may not conduct without a license are now statutory.

This intent is further reinforced by the law allowing payment of a portion of the commission to “unlicensed employees” and “unlicensed individuals working under the supervision of a licensee.”

The end phrase was removed in part because it was made superfluous by a list of prohibited activities of unlicensed assistants now delineated elsewhere in SC license law..

Third, let us examine paying “bird dog” referral fees to unlicensed individuals:

It has always been illegal to pay unlicensed individuals for any real estate activity.

However, LLR ruled that the phrase “for conducting activities requiring a license” limited their ability to sanction licensees who paid such referral fees.

By removing the phrase, LLR is no longer limited in enforcement of SC law and the public can be protected from unlicensed members of the public becoming involved in real estate activity.

Fourth, let us examine paying rebates to your buyers and sellers:

Since a rebate is not a commission or compensation under legal definitions, so the statute does not apply.

Currently, it is legal to pay rebates to your buyers and sellers. It will remain legal.

Rebates are not illegal under federal Real Estate Settlement Procedures laws. It should be disclosed on the HUD-1 Settlement Statement. This can be done via a line item or a “paid outside of closing” notation to the statement.

Philosophically, allowing rebates fits well with the state law’s goal of protecting the consumer as well as the federal goal of lowering the cost of the real estate transaction to the real estate consumer.

Also, because the parties are benefiting; it is highly unlikely anyone will ever raise this issue or file a complaint.

In summary:

Therefore as of January 1, 2005:

You can pay out of state licensees for referrals.

You can pay your unlicensed assistant a percentage of the commission or compensation from a real estate activity so long as they are paid in other ways too.

You cannot pay unlicensed persons for referrals.

You can pay rebates to your buyers and sellers.

HURRICANE FRANCES OR FIRE DAMAGE

What happens if a storm knocks down a tree or takes off a portion of a house prior ?

The South Carolina Association of REALTORS® “Agreement to Buy and Sell Real Estate Residential” (Form 310 commonly called the Contract) has several provisions dealing with this type of situation.

During Hurricane season it is advisable to review storm procedures with your agents and clients.

Remember that Homeowner’s Insurance Underwriters will suspend policy writing within certain storm parameters. No insurance means no loan which means no closing.

Realize that a big storm can delay closings for very long periods of time. Storm damage may impact the property. Delays may also be caused by the law firm not having power (no computers) or having their office damaged.

Paragraphs 4 and 15 delineate how to handle the issue contractually.

Paragraph 4 Possession:

“The Property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted.”

So if a storm changes the condition of the property, the Seller will find it impossible to comply with this section of the contract.

Paragraph 15 Risk of Loss or Damage:

“In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer and Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this agreement.”

So if a storm damages the property in a significant way, both parties have the unilateral of terminating the contract. (Either can escape).

Before your client tries to escape a contract, please advise them to speak with their attorney to avoid being sued for breach of contract.

Whether your client heeds this advice or not, it will insulate you from any client lawsuit claiming they were damaged because you did not tell them to see their attorney before terminating their contract.

Any questions: LegalHotline@SCREALTORS.com

800-233-6381 or 803-772-5206.

PSYCHOLOGICALLY IMPACTED

Parents of Columbine killer selling house, ban agents.

The parents of Columbine High School gunman Eric Harris have put their home on the market, but with the massacre - not be allowed to show it.

Agents Rich Petrone and Randy Brown are banned from the showing the home. Both have been critical of both police and parents Wayne and Kathy Harris for not doing more to stop Eric Harris and fellow assailant Dylan Klebold in advance of the attack.

Petrone's son Danny, and Brown's son Brooks, were among the 12 students shot to death in 1999.

Under Colorado law, the listing agent is not required to disclose the background of the homestipulation that two local real estate agents - both of whom lost children in the, but buyer agents may make the disclosure

How would this issue be handled in SC?

Arguably, this property is termed "psychologically impacted." It was the home to an infamous terrorist and murderer. While the structure may be sound, the image of the home and reputation of the property has a stigma. The impact is non-physical and intangible.

In SC, "psychologically impacted" property is discussed in state law.

Psychologically impacted property is basically property where there is no physical impact but there is a non-physical impact on the property.

Real life examples may make this distinction clearer. There are houses which are infamous for example: the Amityville Horror House. While the story of spiritual demons appearing in the attic may make a buyer less likely to buy the home, there are no physical remains of the demons.

Other examples would include: a house where the owner dies of AIDS, a house used for criminal activities, a serial killer's home, etc.

In SC, the Seller has not duty to disclose.

In SC, the REALTOR® has no duty to disclose.

However, if the Buyer directly asks the Seller or the REALTOR® about psychological impact on the property; neither can mislead the Buyer about the property's psychological impacts.

Two warnings about these laws:

First, beyond the law; there is a business concern. REALTORS® who are successful develop clients for the long term. A buyer who finds they've bought the house in the neighborhood that everyone gossips about may not be happy and feel that the REALTOR® and seller tricked them. You do not want a disgruntled buyer speaking ill of your business reputation in your community.

Second, psychological impact and easily become physical impact in most cases. A suicide by may leave biohazard material embedded in the sheetrock or carpet or padding or floorboards. (Blood, bone, and tissue remains may physically impact the property). Criminal activity may leave chemical hazardous wastes from drug production in the property structure and soil.

Once the impact becomes physical by even the slightest iota, then disclosure becomes mandatory.

If your seller (and maybe even their attorney) conclude that disclosure is not required, you may have a difficult decision. You may decide to go along with their decision and hope that you do not get sued by a disgruntled buyer.

Or the more prudent course in terms of risk reduction and long range business reputation may dictate that you make a "noisy withdrawal" as listing agent should you be unsuccessful in

convincing the seller to disclose the issue voluntarily.

If withdrawing, let the seller know that you are not bound to keep material defects confidential and you intend to let other listing agents know about the issue.

This tactic may prevent the seller from dropping you as listing agent in order to fool a buyer into buying the property unaware of the issue by simply re-listing with a listing agency that is willing to go along with the seller's silence on the issue.

Because it is so easy for a buyer's lawyer to find some small physical impact from almost any psychological impact issue and because most REALTORS® are in the real estate business for the long term, SCAR recommends that you and your seller disclose psychological impacts. Accounting for risk management and buyer lawsuit issues, disclosure is in the best interests of all involved.

Therefore, if the seller did not disclose that the home was where the teen aged terrorists lived; it is highly likely that a good trial lawyer could hire an expert to find a small trace of black powder used in making their pipe bombs and voila "no disclosure psychologically impacted property" is instantly transformed into "disclosure required, physically impacted property" and the lack of disclosure becomes an opening for liability to attach to the seller for non-disclosure.

The best advice is to over disclose. It is difficult for a plaintiff to win a lawsuit when disclosure fully informs the buyer who then consents to complete the real estate transaction.

Questions, please contact the SCAR Legal Hotline (a free service provided to SCAR Members) at 1-800-233-6381 or email LegalHotline@SCREALTORS.com.

New SC Real Estate Licensee Law on Psychologically Impacted Property which Takes Effect January 1, 2005

SECTION 24. Section 40-57-180(E) and (F) of the 1976 Code is amended to read:

"(E) No cause of action may arise against an owner of real estate or licensed real estate agent of any party to a transaction for failure to disclose in a transaction that:

(1) that the subject real estate is or was occupied by an individual who was infected with a virus or any other disease which has been determined by medical evidence as being highly unlikely to be transmitted through occupancy of a dwelling place either presently or previously occupied by the infected individual; or

(2) that the death of an occupant of a property has occurred or the manner of the death;

(3) the location of any registered sex offender;

(4) any offsite condition or hazard that does not directly impact the property being transferred; or

(5) any psychological impact that has no material impact on the physical condition of the property being transferred.

SC Law on Stigmatized Property for Owners:

Seller Disclosure law: Section 27-50-90 "Psychologically Affected" Property Disclosure Exceptions:

SECTION 27-50-90. "Psychologically affected" property disclosure exceptions.

(A) An owner is not required to disclose the fact or suspicion that a property may be or is

psychologically affected, as described in subsection (B).

(B) A cause of action may not arise against an owner of real estate in a covered transaction for failure to disclose:

(1) that the subject real estate is or was occupied by an individual who was infected with a virus or other disease which has been determined by medical evidence to be highly unlikely to be transmitted through his occupancy of a dwelling place; or

(2) that the death of an occupant of a property has occurred or the manner of the death; or

(3) public information from the sex offender registry as defined in Article 7, Title 23.

(C) Subsection (B) does not preclude an action against an owner of real estate who makes intentional misrepresentations in response to direct inquiry from a purchaser or prospective purchaser with regard to psychological effects or stigmas associated with the real estate.

New License Law on Disclosure for Real Estate Licensees:

SECTION 13. Section 40-57-137(F) of the 1976 Code is amended to read:

"(F) A licensee who represents a seller shall treat all prospective buyers honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee or, when acting in a reasonable manner, should have been known to the licensee. Notwithstanding another provision of law, no cause of action may be brought against a seller's agent that has truthfully disclosed to a buyer any known material defect including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a seller for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A seller's agent is not obligated to discover latent defects in property or to advise the agent's clients on matters outside the scope of the agent's real estate expertise. A seller's agent, the company, and the broker-in-charge are not liable to a buyer for providing the buyer with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete."

SECTION 14. Section 40-57-137(K) of the 1976 Code is amended to read:

"(K) A licensee who represents a buyer shall treat all prospective sellers honestly and may not knowingly give them false or misleading information about the buyer's ability to perform the terms of a transaction. A buyer's agent is not obligated to discover latent defects in property or to advise his clients on matters outside the scope of his real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a buyer's agent that has truthfully disclosed to a buyer known material defects including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a buyer for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A buyer's agent, his company, and the broker-in-charge are not liable to a seller for providing the seller with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete."

(4) A licensee offering services to a customer may not knowingly give a party in a real estate transaction false information; however, the licensee is not liable to a party for providing false information to the party if the real estate licensee did not have actual knowledge that the information was false and discloses to the party the source of the information. Nothing in this subsection limits an obligation of a seller under applicable law to disclose to prospective buyers all adverse material facts actually known by the seller pertaining to the physical

condition of the property or limits the obligation of prospective buyers to inspect and to familiarize themselves with potentially adverse conditions related to the physical condition of the property, improvements located on the property, and the area in which the property is located. No cause of action arises on behalf of a person against a real estate licensee for revealing information in compliance with this subsection. No licensee is liable for failure to disclose a matter other than those matters enumerated in this subsection. Violations of this subsection do not create liability on the part of the real estate licensee absent a finding of fraud on the part of the licensee.

(5) Notwithstanding another provision of law, no cause of action may be brought against a real estate licensee who has truthfully disclosed to a customer known material defects including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a customer for information contained in any reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A real estate licensee may not be the subject of an action and no action may be instituted against a real estate licensee by a customer for information contained in the form prescribed by Chapter 50, Title 27 unless the real estate licensee is signatory to that opinion or report.

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COMMERCIAL NEWS

BROWNSFIELD REMEDIATION SEMINAR SET FOR OCTOBER

The South Carolina Department of Revenue, DHEC, S.C.A.R. and South Carolina Economic Developers Association will host a one-day seminar on tax, regulatory, insurance, and other incentives for Brownsfield remediation on October 6, 2004, at the SC Archives & History Center in Columbia, SC.

The seminar will cover recently enacted state tax incentives; DHEC's voluntary remediation contract; a very recent case in which a property owner was able to recover remediation costs under its Commercial General Liability Insurance Contract; a case study involving a large remediation project in the Charleston "Neck" area, as well as a national perspective.

The cost is only \$45. [View complete details and full agenda](#) or call 803-898-5040.

OFFICE BUILDING VALUES INCH UP IN 2ND QUARTER, REVERSING TREND

The value of office buildings in the top 50 U.S. markets rose 0.1 percent to an average of \$132.52 per square foot in the second quarter, ending a string of five consecutive quarters of falling property values, according to a new study by real estate research firm Reis Inc.

<http://www.realtor.org/RMODaily.nsf/pages/News2004081805?OpenDocument>

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