



Why Reminger?

Because we understand the delicate legal issues surrounding matters that affect your license, your reputation, and ultimately, your livelihood.

- Defending litigation and insurance defense claims against brokers and agents for alleged misrepresentation, nondisclosure, breach of fiduciary duty, and other matters;
- Representing brokers and agents in Ohio Division of Real Estate investigations and hearings, trade association ethics claims, and commission arbitrations;
- Assisting brokers and agents with compliance issues, audits, forms and policy matters;
- Defending fair housing challenges, including Ohio Civil Rights Commission investigations;
- Addressing all aspects of corporate, employment and business issues for brokers and agents;
- Educating agents on the practical aspects of risk management in state-approved core law and civil rights training

If you have any questions about Real Estate Law and how it affects your business, please contact:



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Real Estate Practice Group Co-Chair

Protect Yourself from Legal Challenges

10 Tips for a Better Paper Trail

Consider the documents in your files, whether paper or electronic, as potential evidence if a legal challenge arises. The quality of your paper trail may either accelerate or prolong the resolution of many types of legal disputes, including lawsuits, Ohio Division of Real Estate complaints, REALTOR® Code of Ethics complaints, Ohio Civil Rights Commission complaints, and procuring cause disputes.

Your paperwork will be scrutinized when a complaint is made about a transaction in which you are involved. However, a solid paper trail can facilitate a quicker resolution of most legal claims.

A document may prove that you did what you were supposed to do when you were supposed to do it. In the absence of documents substantiating your actions or communications, you may be participating in a judicial or administrative process in which a judge, jury, or hearing officer assesses your testimony to determine the facts.

Many lawsuits arising from real estate transactions are filed about 18 months after title transfer. Are you able to reconstruct in detail a transaction of yours that took place a year and a half ago? What did you have for dinner last Thursday? In other words, consider whether the information that you typically keep in your files will help you to establish what happened. The bottom line is that it may have to!

The following are tips for creating paper trail armor to protect yourself in situations where challenges commonly occur:

1. Ohio law requires you to retain documents relating to your work as a licensee for at least three (3) three years, even if no sale is consummated. Be sure to keep all offers and counteroffers, even if they are rejected.

Also retain all consumer policy acknowledgments and all agency disclosure forms for a minimum of three years. Consumer policy acknowledgments must be saved even when you show property to a prospective buyer and no transaction ever results.

2. Note on all e-mails and fax cover sheets what it is that you are attaching. Otherwise, will you be able to ascertain what you sent, e.g., an offer, inspection reports, additional disclosure or contingency removal form? This reference will help to prove

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when you sent a particular piece of information. Where possible, scanned documents should be named and saved electronically along with e-mails.

If you fax documents, save fax cover sheets and receipts by stapling them together and placing them in your file. A jumble of blank fax cover sheets and transmission receipts does not help you if you are called upon to prove what you sent and when you sent it.

If you are communicating or transmitting documents via a web-based system like REO-Trans, be sure to keep written records of your actions electronically or in hard copies. Web-based communications may not be available or accessible to you for the requisite three year document retention period.

3. Say your Buyer asks you a question about some significant aspect or condition of a property. You may not know the answer, and it is certainly okay to say so. Simply offer to secure a written explanation from the Seller and then do it.

Too often, information is lost in transmission from Seller to listing agent to buyer's agent to Buyer, just like the childrens' game of "telephone." Both the listing and buyer's agent have a responsibility to relay this type of information accurately. Why risk miscommunication? Get it in writing.

4. If you receive something by hand or by mail, make a notation of when you did so in your file. You and your office may want to date stamp incoming documents so that you can show when they were received.

If you are personally delivering something to a party other than by fax, e-mail or other means which will generate a record of when the information is delivered, it is advisable to have the party acknowledge receipt of it in writing. This is particularly the case with inspection reports being delivered to a buyer or a buyer's agent. There is no question that you want something in your files showing that this information was timely provided.

5. Be diligent in creating a paper trail about earnest money. If your Buyer does not timely redeem a note or his check bounces, promptly notify the listing agent in writing.

A listing agent should also promptly notify the Seller in writing if a check bounces or if a note is not redeemed.

6. Make notes of important calls and conversations and retain message slips. Even if you are on the run, save those scraps of paper and develop the discipline of placing them into the appropriate file. It does not matter if only you can read your notes. It is helpful to have this information if you are called upon to explain what occurred in a particular transaction.

7. Save showing records and open house logs for your listings and retain printouts of properties shown to Buyers. This can be especially helpful in procuring cause and fair housing claims, where what was shown to whom could be relevant to the legal challenge.

8. If a Buyer elects to waive a home inspection or take some other action that you have advised against, do not hesitate to confirm your professional advice in writing and save a copy for your file.

9. Be certain that all of the appropriate parties sign and date documents. This includes without limitation consumer policy acknowledgments, agency disclosure forms, listings agreements, authorizations for listing extensions and price reductions, purchase agreements and Ohio Residential Property Disclosure Forms. All owners are required by law to sign listing agreements and the Ohio Residential Property Disclosure Form. Exercise caution in obtaining all proper signatures in transactions where foreclosures are pending or not yet confirmed, or anyone is acting on behalf of the owner(s) in title to a property.

10. Save your complete file, even after title transfers. Weeding it when the transaction closes deprives you of the protection of your file materials.

These days, it is virtually inevitable that brokers and licensees will face some sort of legal challenge during the course of her or his career. Prepare for this very real possibility and make your paper trail a risk reduction priority.

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