

THE REALTOR'S DUTIES
(CAN THEY BE SUED FOR NEGLIGENCE?)

As professionals, realtors owe not only a contractual duty to their principal, they also qualify for that class of litigation targets who "have acquired special skills" (the realtor's qualifications and licence) and "who owe a duty of care to anyone relying on those skills."

Where a realtor is negligent in serving the interests of his client, that client may claim against the agent either for breach of contract or for negligence. If the realtor deals with the other party to the sale, either directly or indirectly, they may also be liable to that other party for negligence even though they do not have a contractual relationship with that party.

Before the changes allowing realtors to act for either the vendor or the purchaser (previously all realtors acted for the vendor as it was the vendor who paid them out of the commission) the purchaser had no contract either with the salesperson or agent. They had to base any claim on negligence, usually negligent misrepresentation.

What, then, is negligence? The textbooks are full of lengthy, high-blown phrases to define it but when all the extra syllables are peeled away, negligence basically means that the defendant owed some sort of duty to the plaintiff and then screwed up so bad that he or she had to pay for it. One judge was asked to differentiate between negligence, gross negligence and criminal negligence. His answer was a fool, a damned fool and a g@#d damned fool. He was hailed as a wise and sagacious jurist.

Sometimes, when the realities of a given situation are a bit grim and the property in question has difficulty selling on its own merits, the imagination of the salesperson or, more likely, the vendor, can paint a somewhat more attractive picture than reality might otherwise allow. Misinformation, evasive responses, half-truths, whopping lies, small fibs and stretchers are frowned upon by honest folk everywhere but such things do occur rather regularly in the real world and with startling regularity in the real estate world.

If the realtor simply acts as a conduit of incorrect or false information, without checking to see if that information is accurate or qualifying their answer with some sort of disclaimer, they are probably being negligent. If it later turns out that damages flowed from their advice they may be held just as liable as the rascally vendor (who presumably knew all along).

Zoning, revenue, the type of plumbing, the soundness of the roof and other such things are important and should be checked out, especially when there are specific inquiries. As any politician can tell you, while it is quite easy to hide the truth in the short term, in the long term it seldom stays hidden.

Realtors who put themselves in the position of unwittingly assisting the vendor to deceive the purchaser with such exaggeration and misrepresentation may find that when the chickens come home to roost, they lose more than just their good reputation. Of course, purchasers who are foolish enough to blindly accept whatever they are told without checking it out for themselves often find that, unlike the realtor upon whom they relied, they get to live with the problem every day.

If the vendor or the realtor says something or does something to hide or mask the true state of affairs they can be guilty of negligence and liable to the other side of the transaction with whom they may have no formal relationship. However, it is still a lot easier to accuse than to prove or to be compensated. The best idea is still to do a thorough inspection (better yet - get a properly qualified inspector to look the place over and give you a report in writing) and get any promises in writing. It is still your money and no one is going to protect it as well as you do.

Having said all of that, however, it should be remembered that there is a very simple way to avoid these problems - get good advice before you sign on the dotted line. Get a home inspector to look over the property and get a lawyer to look at the paperwork. If you only rely on the realtor, you may be putting all of your eggs into the wrong basket.

However, most realtors are quite professional, hard working and honest. If you don't happen to know one in your area, ask around or ask your lawyer to recommend one.