

Don't be a RELWOC

James L. Goldsmith, Esq.

A FSBO, or for Sale by Owner, is objectively a seller who is marketing his/her real estate without the assistance of a licensed real estate broker. Subjectively, we think of a FSBO as cheap and not wise enough to know what he/she does not know about the marketing and sale of real estate. You, my readers, are not particularly fond of FSBOs.

So what's a RELWOC? You will not find the answer anywhere but here given that I've just made it up! It stands for Real Estate Licensee Without Counsel. Objectively, it refers to a real estate licensee who participates in the legal system without having engaged a lawyer. Subjectively, it refers to a real estate licensee who is cheap and not wise enough to know what he/she does not know about participating in the legal process without the benefit of counsel. The parallel between a FSBO and RELWOC are rather obvious; and it is an apt comparison.

I am inspired to write this article because I often encounter RELWOCs as part of my practice and usually they are in a predicament. A buyer sued a seller for money damages claiming that the seller concealed a material defect. My client, the listing agent, was not named in the lawsuit. In the course of the suit, the buyer served notice on the listing agent that they wished to take his deposition. As the listing agent was not a defendant in the lawsuit and since no one had advised him that he was in anyone's gunsight, he appeared alone. Without counsel. Not having the benefit of professional assistance. RELWOC.

According to the listing agent, his deposition performance went rather well. His answers were reasoned and his explanations, although wordy, were spot-on. I dare say, he responded to the questions with aplomb, outshining attorneys who apparently knew little about the standards of real estate practice and the tasks that real estate licensees perform. "Boy, did I educate them," he thought. Boy, did he!

About two months after his stellar performance, the listing agent was joined as an additional defendant in the lawsuit by the buyers. It could have been the sellers who joined him, it really doesn't matter. At the end of the day, the listing agent became a party to the lawsuit with far more than his deductible on the line, because he was a RELWOC.

I was hired to defend the listing agent in court. This task was made all the more challenging because I was forced to reckon with his previously given testimony which, unlike my client, I did not view so favorably! In fact, my client implicated himself in many ways that he could have avoided had he had proper instructions from someone who was in his camp looking out for his interests. Out of context, my client's deposition testimony was reasonable; but for purposes of the litigation, it was abysmal. How could his testimony be bad given that he simply answered questions truthfully?

Truth is indeed required, no ifs, ands or buts. Deponents (those answering questions in a deposition), however, when left to their own devices, tend to go off message, respond to

questions never asked, and freely volunteer information that is unnecessary, distracting and often times inculpatory. Truthful answers to a question might be 1) “Oh yeah, I could tell that the legal description in the deed was way off;” 2) “I am not an expert in surveys or deeds and did not feel that I could or should offer an opinion as to what it conveyed.” Experienced lawyers will likely dig deeper and explores the parameters of your answers. But why give them more grist for the mill? Off-the-cuff, uncoached remarks will be your undoing.

Like FSBOs, RELWOCs like to save money. “Saving” is all a matter of perspective, and in this case my client’s “savings” was paying \$10,000 to the Plaintiffs, payment of his legal fees, and lost time. Had he been represented at the deposition by counsel, he likely would have “saved” money.

Need I tie this article up with a neat conclusion? Best to all.

**Copyright © James L. Goldsmith, Esquire, CALDWELL & KEARNS, P.C., 2016
All Rights Reserved**

Jim Goldsmith is an attorney with Caldwell & Kearns and serves as general counsel to PAR. A substantial portion of his practice is dedicated to providing advice and counsel to real estate licensees. He and his firm represent and defend real estate salespersons and brokers in civil lawsuits and licensing claims across the Commonwealth. Jim also defends REALTORS® in disciplinary hearings conducted by the Real Estate Commission. He routinely counsels employers on employee relations issues and is one of the voices of the PAR Legal Hotline. He may be reached at www.caldwellkearns.com.