

Communication Skills 202

By James L. Goldsmith, Esquire

A 100-level course on communication would focus on returning calls promptly, being clear and precise in all communication, and being accurate in grammar and spelling. It would include a section on social media and why one should avoid divisive and ideological discourse. This, however, is a 200-level course.

Like you, I am a fiduciary to the clients I represent. I frequently speak for my clients and that carries significant weight. Being flip, casual or communicating without my clients' authority is not appropriate.

While your situation as a REALTOR® is not entirely parallel, your words and representations will have significant impact for you and your clients.

All too often our communication is reflexive and has not been carefully weighed and may not have been discussed with the client or office manager. Examples abound:

- "We have a deal." This statement might be made by the listing salesperson on a telephone call with the buyer agent who assures that the buyers will sign the counteroffer reflecting a substantial increase in the purchase price and who promises to deliver the signed counteroffer the following day. What happens when that evening the listing agent unexpectedly receives an offer that is \$20,000 higher with a low loan-to-value mortgage contingency? If the listing agent rescinds the counteroffer before it is signed and delivered does her credibility take a hit for having uttered those words "we have a deal"?
- "So, we're good getting the reply to inspections to you on Monday?" Consider the buyer agent who asks the listing agent if the buyer can have two days added to the home inspection contingency because, while the inspection is scheduled to take place within the allotted time, there is concern that the report may not be in the buyer's hands in time to review and prepare a corrective proposal. If the listing agent utters something to the effect that "I'm sure that's no problem; I've spoken to the seller and he's comfortable, are we in the clear?" This is essentially the fact pattern in a case I am litigating where the corrective proposal seeks a \$200,000 reduction in a \$1,000,000 sale. Unfortunately, no extension of the contingency period was signed and the corrective proposal was submitted two days after the contingency timed out. The buyer agent is claiming that the listing agent assured him that the extension was approved by the seller and now the buyer is suing their buyer agent for not securing the appropriate extension of time. Only the lawyers are making money!
- Consider the buyer agent who utters something to the effect that the buyer "doesn't need a survey" or any one of the inspections available. You know all too well where this is going. If there is a problem, the buyer will remember that her agent convinced her to forego the examination that would have shed light on her problem that later surfaces.
- Consider the buyer agent who says to the buyer that she will "have" to offer at least \$XX,000. What does the buyer think a year later when an appraisal performed for refinancing reveals a number way lower than paid?

Each of these examples are the subject of disputes in litigation. Each could have been avoided.

There is no deal until it is writing signed and dated by all parties. There is no extension for settlement or a contingency until it is in writing signed by all parties. There is no price below which the seller will accept; rather you have an opinion based on your experience and the facts you may possess with regard to a specific transaction. One never knows what inspections a buyer should have or forego; one only can discuss the benefits of the inspection and of the fact that in their absence there is a risk and that risk is borne by the buyer.

One should never presume that buyer or seller is hearing what you think you are saying.

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