

## The Difficult Client

By James L. Goldsmith, Esquire

A frequent subject of the Hotline is what to do about a difficult client. A recent call involved a seller who flatly refused to disclose a likely material defect with the property. I say “likely” because while the subject property had not been diagnosed with the problem, every other home built by the same builder in the neighborhood eventually exhibited a common structural problem. Apparently the garage, built over a portion of the basement of these homes was designed with a structural flaw. And while the subject home did not yet exhibit the problem, the listing agent became familiar with the common problem to the other properties and felt the situation should be disclosed as a design flaw.

The seller insisted that no mention of the issue be made whatsoever. The agent, however, felt uncomfortable. The agent had also seen evidence in the subject basement of what appeared to be a “fix” although the seller insisted that what the agent had observed was merely the repair of a cosmetic issue and not a structural flaw.

The agent was sufficiently concerned that he called the Hotline asking for advice. I reminded him that the law requires every real estate licensee, regardless of his or her agency affiliation, to disclose known material defects. I also advised that what is known versus what is suspected can be a close call and that a jury, with the benefit of hindsight after a problem has surfaced, is more likely to connect the agent’s suspicion to actual knowledge. Why run the risk?

The agent had come to the same conclusion and wanted to terminate his listing with the seller, but had not done so. His reason was that it was his belief that if he fired the seller, the seller would sue for breach of contract.

It is true that a party to a contract, who terminates without justification, may be liable for damages. It would seem that the first question is whether the agent is justified in terminating the relationship. Justified or not, what are the damages that are inflicted upon a seller when a listing agent terminates early? Is it hard to find another broker who will list the property for sale? I am not aware of a case in Pennsylvania where a seller has sued a listing broker for early termination.

Situations arise where a question of whether a material defect exists goes unanswered. If you proceed in such a situation and make no mention of the potential defect, the risk is evident. As I have noted above, once a defect is found, your previous suspicion now takes on the specter of actual knowledge. Safe is better than sorry.

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*Jim Goldsmith is an attorney 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.*