

# CONNECTICUT DISCLOSURE, RESPA, and LAW UPDATE

Mandatory Continuing Education Course  
2008-2010 CE Cycle

# COURSE GOALS

*understanding of:*

1. requirement to disclose material facts
2. prohibition against accepting illegal kickbacks
3. recent CT law changes

# DISCLOSURE OF MATERIAL FACTS

**Real estate agents have a**  
**DUTY**  
**to**  
**DISCLOSE**  
**MATERIAL FACTS**  
**to clients and customers**  
*(buyers, sellers, landlords, and tenants)*

# WHY?

- **COMMON LAW** – court cases
  - duty of fair dealing
  - no intentional misrepresentation, negligent misrepresentation, or concealment
- **STATUTORY LAW** - Connecticut legislature
  - CT Real Estate Regulation Section 20-328-5a:  
“...licensee shall not misrepresent or conceal any material facts in any transaction.”

# *What IS a* **MATERIAL FACT?**

(must fully disclose)

- An **important fact** about real estate or the transaction involving the real estate which
  - is not readily observable, and
  - if known, might change a person's mind about proceeding with a transaction and/or at what price
- **Practically... ask ...** *“Would a reasonable person think it is important?”*

# MATERIAL FACT, *continued*

## ■ Examples:

- Construction defect
- Zoning problem
- Land located in floodplain or wetlands
- Building code non-compliance
- Septic v. sewer; well and well water issues
- Termites, leaks, environmental contamination
- Excess noise
- Access problems
- Agent's present or contemplated interest in the property
  - *CT Regulations Section 20-328-2a (a) and (b)*

Can you think of examples of material facts in transactions that you have been involved in?



## ***You be the Judge 1***

- Listing agent knew there was a broken step on the listed property. Buyer fell on the step, was injured, and sued the listing agent. What result?
- Agent liable for not disclosing broken step. Court held that listing agent had a duty to warn prospective buyer customers about hidden defects known by the agent.



## *You be the Judge 2*

- Listing agent did not know there was a broken step on the listed property. Buyer fell on the step, was injured, and sued the listing agent. What result?
- Most state courts would not find the agent liable for failure to disclose an unknown defect. However, some states do impose a duty to investigate on listing agents. Connecticut courts have not ruled on an agent's duty to investigate.



## *You be the Judge 3*

- Buyer agent stated that a change in zoning could be easily obtained for property by buyer. Agent had not researched the matter and was incorrect in her statement. What result?
- CT Real Estate Commission found that such a false statement violated the licensing laws. Agent salesperson and broker were fined; salesperson's license was suspended.



## ***You be the Judge 4***

- Property sale falls through because buyer's inspection reveals a "failing" septic system. Owner gets another professional opinion saying the septic system is fine, and requests that agent not mention the first report. Does listing agent have a duty to tell potential buyers that one inspection of the system showed that it was failing?
- Yes. The listing agent should fully disclose the results of all known inspections.



## ***You be the Judge 5***

- Listing agent knew that former property owner had been shot to death on the property in a drug-related incident. Agent did not disclose this fact to buyer. Buyer sued the listing agent, on the grounds that he would not have bought the house if he had known. What result?
- While a death or felony may seem like a material fact, Connecticut law says that it is non-material and need not be disclosed...see next slide.

# *What is a* **NONMATERIAL FACT**

**(no duty to disclose)**

- Whether a property occupant has or had a disease listed as a “**reportable disease**” by the Public Health Commissioner
  - Reportable Diseases List
    - [http://www.ct.gov/dph/lib/dph/Vol28No1\\_FNLCLR.pdf#48127](http://www.ct.gov/dph/lib/dph/Vol28No1_FNLCLR.pdf#48127)
    - Examples: AIDS, HIV, chicken pox, Lyme disease

# NONMATERIAL FACT, *continued*

- Whether there was a **death or felony** on the property
  - unless buyer requests this information in writing

Can you think of examples of non-material facts in transactions that you have been involved with?



## ***You be the Judge 6***

- Listing agent knew that the seller's children recently had measles (a DPH reportable disease). Buyer asked agent in writing whether anyone living on the property ever had an infectious disease. Agent did not respond. After buying the house and finding out, buyer sued the listing agent. What result?



## ***You be the Judge 6 continued***

- Agent is not liable for failure to disclose. A reportable disease is considered non-material and therefore need not be disclosed, even if the buyer inquires in writing.
  - Owner and listing agent would have a duty to disclose information about a death or felony if the buyer had requested it in writing.
  - If agent did respond, agent must be truthful and can't lie.



## ***You be the Judge 7***

- Listing agent knew that the seller was selling his house because he was very sick and needed to move to a warmer climate. Buyer asked listing agent why the seller was selling. Agent disclosed that the seller was very sick. Seller sued listing agent after he found out about the disclosure. What result?
- Listing agent is liable for disclosing seller's confidential information... see next slide.

# *What information must remain*

## **CONFIDENTIAL**

(cannot disclose)

- Information about a **CLIENT**
  - personal or financial status
    - including reasons for buying or selling
  - previous offers received by the client or made by the client
- Protection does NOT apply to **CUSTOMERS**
  - can disclose confidential information about a customer

Can you think of examples of confidential information in transactions that you have been involved in?



## ***You be the Judge 8***

- Agent previously had a listing with seller. Before the listing expired, seller told agent that he was going through a divorce.
- Agent now represents a buyer interested in that seller's house. Can agent tell buyer about the divorce, in hopes of gaining a negotiating advantage?
- No. Confidential information about a client, obtained while representing the client, must forever remain confidential.



## ***You be the Judge 9***

- Listing agent is selling a beach front property, and has been told that neighbors regularly pass through the property to access the beach in the summer and claim a prescriptive easement right to do so.
- Listing agent tells buyer that there has been a problem with trespassers before, but a new fence will solve the problem.
- During the summer, buyer finds people passing through the property to access the beach. Buyer sues listing agent. What result?



## ***You be the Judge 9, continued***

- Agent would be liable for failure to disclose what he knew about the potential prescriptive easement.
- Agent must tell the “whole” truth. Duty to disclose is not met by disclosing some facts (i.e. trespassing problem) and withholding other facts (i.e. trespassers believe they have a right to prescriptive easement).



## ***You be the Judge 10***

- The septic system on a listed property was tested and found to be in good condition. Listing agent disclosed this to buyer.
- After a storm, however, the septic system seemed to be malfunctioning and the sewage was backing up into the toilets.
- Does the listing agent now have a duty to update the buyer?



## ***You be the Judge 10 continued***

- Yes. If circumstances change making prior information incorrect, agent must inform the buyer.
  - Agent should also instruct the seller to revise the seller's property condition disclosure statement.

# Other Disclosure Issues

- **Property condition disclosure form**
  - to be completed/updated by the seller
  - before sale, exchange, or lease with an option to buy residential real estate (1-4 units)
  - doesn't relieve agent of duty to disclose material facts to a buyer

Discuss issues that you have encountered regarding the state-required property condition disclosure form

# Other Disclosure Issues, continued

- **Lead paint disclosure**
  - *Federal law*
  - to be completed by seller or landlord
  - before buyer or tenant becomes obligated on a contract or lease of a residence built before 1978
  - must disclose known lead paint and lead paint hazards, provide any lead reports, and give federal lead pamphlet
  - buyer has 10 days to conduct a lead inspection before being bound by a contract

**What does this mean to you in practice?**

# Other Disclosure Issues, continued

- **Off-site condition disclosure**
  - agent may have a duty to disclose off-site conditions to a buyer
    - example: hazardous waste facilities
  - duty satisfied by giving buyer written notice of availability of Department of Environmental Protection lists at the town clerk's office

**What does this mean to you in practice?**

# Other Disclosure Issues, continued

- **Hunting or shooting properties disclosure**
  - agent may have duty to disclose that property is near a hunting or shooting facility
  - duty satisfied by giving buyer a written notice about town clerk's list of hunting and shooting properties

**What does this mean to you in practice?**

**RESPA:  
prohibition against illegal  
kickbacks**

# RESPA

- **Real Estate Settlement Procedures Act**
- federal law enforced by Department of Housing and Urban Development (HUD)
- PROHIBITS real estate agents from **receiving a “thing of value” for referring business** to a real estate settlement service provider (**SSP**) in a residential transaction
  - example: fee from mortgage lender, title insurance company, home inspector for referral of business

**What is a “thing of value”?**



## ***You be the Judge 11***

- Mortgage company passed out “play of the week” cards to real estate agents that referred buyers. These cards allowed agents to go to an online site and play games to win prizes such as money, cars, cameras, and TVs. Is this a violation of RESPA?
- Prizes, and even just the opportunity to win a prize, is considered a “thing of value”, and thus this situation violates RESPA.



## ***You be the Judge 12***

- Title insurance company sends movie tickets to real estate agent in a thank you card. Has the real estate agent violated RESPA?
- Yes. RESPA prohibits a real estate agent from receiving a “thing of value” from an SSP. Movie tickets would be considered a thing of value.

# RESPA

- **ALLOWS** SSPs to provide real estate agents with normal **promotional** or **educational** material
  - activity cannot be in exchange for a referral
  - activity cannot defray expenses that agent would have had to pay

Can you think of examples of promotional or educational material provided by an SSP?



## ***You be the Judge 13***

- An inspection company provides a food tray for broker's open house, posts a sign that the lunch was sponsored by the inspection company, and distributes brochures about its services. Is this a violation of RESPA?
- No. This would be considered a normal promotional activity for the inspection company.
  - *if promotional materials weren't posted or distributed, this would be considered a violation of RESPA*

# RESPA

**ALLOWS** a real estate agent to receive a fee from an SSP as compensation for **actual services** performed or goods provided by the agent. The fee:

- must be a flat fee, not percentage
- cannot be based on the success of a transaction
- cannot exceed the market value of the services or goods provided



## ***You be the Judge 14***

- A mortgage lender hires a real estate agent to take buyer loan applications and collect credit documents. The agent is paid if the activity results in a loan. Is this a violation of RESPA?
- Yes. The fee paid to the real estate agent for her services is based on the success of the transaction.

# RESPA

- **ALLOWS** a real estate agent to receive money from an **affiliated business**
  - business must be owned by the agent
  - money must be related to the return earned from owning the business
  - agent must disclose affiliation between agent and business to clients
  - agent cannot require that clients/customers use the affiliate business

**Can you think of situations involving an agent and an affiliated business? Is the activity allowable?**



## ***You be the Judge 15***

- Real estate broker also owns an interest in an insurance company. Will broker be in violation of RESPA if he refers buyers to the insurance company?
- No, if certain conditions are met. Broker cannot require that buyer use that insurance company, must disclose his interest in insurance company to buyer, and cannot receive any payments from insurance company related to referral of business.



## ***You be the Judge 16***

- Real estate brokerage firm offered its agents incentives, including invitations to special dinners, vacations, and car leases, for referring buyers to an affiliated mortgage brokerage company. Is this a violation of RESPA?
- Yes, these type of incentives amount to illegal kickbacks.

# CONNECTICUT REAL ESTATE LAW UPDATE

# REAL ESTATE LICENSING

## ■ **Increase in Licensing Fees** effective October 1, 2009

| <i>Fee Description</i>                              | <i>Current \$</i> | <i>New \$</i> |
|---|-------------------|---------------|
| Real estate broker - license application            | 60                | <b>120</b>    |
| Real estate salesperson - license application       | 40                | <b>80</b>     |
| Real estate broker – initial license                | 450               | <b>565</b>    |
| Real estate broker – renewal                        | 300               | <b>375</b>    |
| Real estate salesperson – initial license & renewal | 225               | <b>285</b>    |
| Real estate broker - reinstate license              | 300               | <b>375</b>    |
| Real estate salesperson - reinstate license         | 225               | <b>285</b>    |

# LICENSING, continued

- **Confidentiality of Licensees' Home Addresses**
  - Senate Bill 72 (2009)
    - would have prevented DCP from posting home addresses on online public license registry
    - did not pass because DCP changed administrative procedures (*now unnecessary*)
  - DCP website allows licensee to post home or business address
    - [www.ct.gov/dcp](http://www.ct.gov/dcp) - "Renew Online or Change Address"
    - create account/register
    - option to change address

# LICENSING, continued

- **Appraisal Education Requirements**
  - education requirements for both **certified general** and **certified residential appraisers** changed
    - now includes college level coursework
    - in effect as of January 1, 2008

# LICENSING, continued

- **Timeshare and Vacation Ownership**
  - Timeshare interest deemed real estate
    - **Requires CT real estate license to sell CT timeshare interest**
    - Requires appropriate state real estate license to sell out of state timeshares
  - *more on new timeshare law in a few slides*

# LICENSING, continued

## ■ Mortgage-related Licensing

- licensing requirements for mortgage professionals (*including prelicensing, testing, and CE*)
  - Mortgage lenders
  - Correspondent mortgage lenders
  - Mortgage brokers
  - Mortgage loan originators
    - person who takes, offers, or negotiates a residential mortgage loan application for compensation
    - exempts real estate licensee, unless compensation comes from mortgage professional
- *see CT Dept of Banking website – [www.ct.gov/dob](http://www.ct.gov/dob)*

# LICENSING, continued

- **Consumer Credit**
  - Debt Negotiation License
    - Department of Banking
    - **Required for person that negotiates short sales or foreclosure rescue services**
    - effective October 1, 2010

# REAL ESTATE PRACTICES

## ■ **Property Conveyance Tax**

- municipal conveyance tax rate increase to **0.25%** has been extended until **July 1, 2010**

## ■ **Document Recording Fees**

- temporarily increased by \$10 (till 07/10/2010)
- first page = **\$43**; each add'l page = **\$5**

# PRACTICES, continued

- **Electronic Recording**
  - CT adopted the Uniform Real Property Electronic Recording Act
  - allows (*does not require*) towns to accept **electronic documents** for recording

# PRACTICES, continued

- **Property Condition Disclosure Form**
  - DCP required to create new form
    - by April 1, 2010
  - Will now include
    - municipal contact information if property is located in an historic district or is an historic property
    - statement listing all leased appliances and other leased items
      - Can you think of other potential leased items?
      - propane tanks, water heaters, security systems, etc.

# PRACTICES, continued

- **Disclosure of Gun and Hunting Clubs**
  - sellers and sellers' agents can (*but are not required to*) provide a buyer with a written notice of a **town clerk list** of hunting and shooting properties
  - this meets any **duty to disclose** the presence of neighboring hunting and shooting properties
  - owners of hunting or shooting properties voluntarily enter information on the town clerk list

# PRACTICES, continued

## ■ **Timeshare and Vacation Ownership**

- requirements for creation, conveyance, and management
  - purchasers must be given **disclosure statements**
  - CT timeshare plans must be recorded in land records
  - effective January 1, 2010
    - exempts timeshares established before 12/31/09

## ■ **Common Interest Ownership**

- numerous changes to Common Interest Ownership Act
  - including **resale certificate disclosures** and cost calculations
  - effective October 1, 2009

# PRACTICES, continued

- **Connecticut Eminent Domain Limitations**
  - A city or town
    - cannot use eminent domain solely for the purpose of increasing local property taxes
    - must follow certain **procedural safeguards** when taking property for redevelopment (including holding a public hearing)
    - must offer to **sell back unused property** acquired by eminent domain to the former owner for the original purchase price

# Practices, continued

## ■ Mortgage Foreclosure

- mandates **foreclosure mediation**
  - effective July 1, 2009
- prohibits any person (not just mortgage brokers) from **influencing** a residential real estate appraisal
  - includes failure to pay and refusal to use an appraiser for an appraiser that reflects fair market value but is less than sales price

## ■ Mortgage Fraud

- **Felony** – making or using any material misstatement, misrepresentation, or omission during residential mortgage lending practice
  - effective October 1, 2009
- *For more see CT Dept of Banking website – [www.ct.gov/dob](http://www.ct.gov/dob)*

# Law Update Wrap-up

- *Instructor should report and discuss any other 2009 and 2010 Connecticut important real estate-related legislation or court cases*
- *Do any students have anything that they would like to add or discuss?*

# *Questions? Comments ?*

## **Use good judgment:**



- disclose material facts
- refuse illegal kickbacks
- be aware of law changes

**This course was developed by the  
Center for Real Estate, University of Connecticut  
at the request of the Connecticut Real Estate Commission**

Special thanks to the following individuals for their contributions:

- **Katherine Pancak, Professor, University of Connecticut**
- Barbara Thompson, Chair, Connecticut Real Estate Commission
- Marilyn Keating, Vice-Chair, Connecticut Real Estate Commission
- Lana Ogrodnik, Commissioner, Connecticut Real Estate Commission
- **Christopher Ashe, Education Learning Unlimited**
- Linda Dick, Real Estate Consortium of CT Community Colleges
- Michele Erling, Department of Consumer Protection
- Terry Hastings, Hamilton Mortgage Company
- **Judith Johannsen, Connecticut Association of Realtors®, Inc.**
- Bunny Kyle, Professional Valuation and Real Estate School
- John Morgan, Morgan Testing Services
- **Laureen Rubino, Department of Consumer Protection**