

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 _____ and _____
(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.”

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)

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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?



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?



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?



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?



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?

What is a
NONMATERIAL FACT

(_____)

- Whether a property occupant has or had a disease listed as a “ _____ ” by the Public Health Commissioner
 - Reportable Diseases List
 - 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 _____ **or** _____ 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

- What result?



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?

What information must remain

CONFIDENTIAL

(_____)

- Information about a _____
 - 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 _____
 - 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?



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

- What result?



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

- What result?

Other Disclosure Issues

- _____ 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

- _____ disclosure
 - 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
 - *Federal law*

What does this mean to you in practice?

Other Disclosure Issues, continued

- _____ 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

- _____ or _____ 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

- R E S P A
- federal law enforced by Department of Housing and Urban Development (HUD)
- PROHIBITS real estate agents from **receiving** a “_____” **for referring business** to a real estate settlement service provider (____) in a residential transaction
 - example: fee from mortgage lender, title insurance company, home inspector for referral of business

What is a “_____”?



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?



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?

RESPA

- **ALLOWS SSPs to provide real estate agents with normal _____ or _____ 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 _____ or _____ 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?

RESPA

ALLOWS a real estate agent to receive a fee from an SSP as compensation for _____
_____ 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?

RESPA

- **ALLOWS** a real estate agent to receive money from an _____
 - 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 _____? 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?



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?

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	120
Real estate salesperson - license application	40	80
Real estate broker – initial license	450	565
Real estate broker – renewal	300	375
Real estate salesperson – initial license & renewal	225	285
Real estate broker - reinstate license	300	375
Real estate salesperson - reinstate license	225	285

LICENSING, continued

- **Confidentiality of Licensees' Home Addresses**
 - Senate Bill 72 (2009)
 -
 -
 - DCP website allows licensee to post home or business address
 - _____ -“Renew Online or Change Address”
 - create account/register
 - option to change address

LICENSING, continued

- **Appraisal Education Requirements**
 - as of January 1, 2008, the education requirements for both _____ and _____ were changed
 - now includes college level coursework

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 _____
professionals (*including prelicensing, testing, and CE*)

- Mortgage lenders
- Correspondent mortgage lenders
- Mortgage brokers
- Mortgage loan originators

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- see *CT Dept of Banking website* – 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 ___% has been extended until _____, _____
- **Document Recording Fees**
 - temporarily increased by \$10 (till 07/10/2010)
 - first page = \$___; each add'l page = \$___

PRACTICES, continued

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

PRACTICES, continued

- **Property Condition Disclosure Form**
 - DCP required to create new form
 - _____
 - Will now include
 -
 -

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 _____ 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
 -
 -
 -
 -
- **Common Interest Ownership**
 - numerous changes to Common Interest Ownership Act
 -
 -

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 _____ when taking property for redevelopment (including holding a public hearing)
 - must offer to _____ **unused property** acquired by eminent domain to the former owner for the original purchase price

Practices, continued

- **Mortgage Foreclosure**

- mandates _____

-

- prohibits any person (not just mortgage brokers) from _____ a residential real estate appraisal

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- **Mortgage Fraud**

- _____ – 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

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
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