

Tips for Real Estate Agents to Avoid Litigation When Handling “As-Is” Transactions

1. **Use a Seller’s Disclosure Form.** Real estate professionals should always have his or her customer execute a seller’s disclosure form. Real estate professionals should also direct customers to disclose ALL defects which he or she is aware (even those not contained on the seller’s disclosure form). Furthermore, when dealing with condominium or homeowners’ associations, it is a good practice to direct buyers to contact the association’s property management and/or board of directors in order to obtain any additional information which the seller may not have known.
2. **Keep Disclosure Timely.** Real estate professionals should have their customers update and date the seller disclosure form on a routine basis when applicable. This protects both the sellers and the real estate professional by demonstrating that at the time the parties entered into a contract, the buyer was given the most up-to-date information.
3. **Maintain Accurate Records.** Always maintain accurate, detailed records regarding all transactions. In the event that a lawsuit ensues, a well-documented file will be critical to a defense because documentation is more persuasive than self-serving testimony. While it may be difficult to maintain records of all e-mails and text messages related to a transaction, at a minimum, a real estate professional should make sure to maintain the following critical documents:
 - a. Fully executed sales contract;
 - b. Seller disclosure forms;
 - c. Inspection reports;
 - d. All communication with any party regarding the condition of the party.
4. **Confirmation from Seller.** Before finalizing a contract, confirm in writing that the seller disclosed all known defects and that you did not persuade them to withhold any information.