



Real Estate Errors and Omissions

Claim Examples

▶ **Failure to Disclose – Seller’s Agent**

After the sale of a residential property, the seller’s agent, our insured, was sued by the buyers for failure to disclose the condition of the well on the property. Although the buyers had previously waived a well inspection and there was no evidence that the seller’s agent had any knowledge that the well was defective, the buyers demanded a rescission of the sale. The matter was defended in favor of our insured, but the legal costs to defend this case were over \$48,000.

▶ **Failure to Disclose – Buyer’s Agent**

A couple purchased an updated property that showed no clear signs of termite damage. The house was advertised as a “handyman” special, and, after closing, the new owners did repairs. They took down some of the existing drywall in the living room and noticed there was prior termite damage. The couple filed suit against the sellers, the seller’s agent and their own agent for failing to disclose this information. Our portion to settle was \$13,500 with defense costs over \$16,000, totaling more than \$29,500.

▶ **Failure to Disclose – Seller’s Agent**

A couple purchased an existing property, and after closing, discovered there were high levels of radon in the house. Not wanting to risk the health of their two asthmatic children they immediately moved out, put the house up for sale and disclosed the radon levels. They sold the house at a loss of \$32,000. They sued the seller’s agent for not disclosing the radon levels and for their \$32,000 loss. The total for this claim was over \$61,000 in damages and over \$29,000 in attorney fees.

▶ **Misrepresentation – Buyer’s Agent**

A couple purchased a lakefront vacant lot that was subject to a conservation easement. Although the vacant lot was marketed as a “lakeshore frontage to enjoy a beach in your backyard,” the buyer’s agent told the buyer about the easement numerous times. Additionally, the restrictions were noted on the title which the buyer would have had at closing. After closing, the owners began to clear the trees and brought in sand to make a beach. The buyers were issued a violation notice mandating that the owners take corrective actions to remediate their actions and restore the property to its original condition. The owners sued their own agent for misrepresentation but later withdrew their claim when defense counsel was able to show evidence that the easement had been disclosed. Total cost to defend was over \$14,000.

▶ **Failure to Provide Mortgage Contingency and Negligence**

A man was looking to purchase a suitable property for a recreation facility. He found a property that he liked and entered into a contract. He put down a deposit of \$40,000 and applied for a mortgage for the rest. The contract afforded a mortgage contingency clause of 30 days. The buyer was unsuccessful at obtaining financing, and as the contingency due date got closer, the buyer’s agent advised the buyer to seek an extension or withdraw from the contract to prevent the buyer from losing his deposit. However, the buyer was confident that he would be able to obtain the financing and ignored his real estate agent. The deadline expired and the seller brought suit against the buyer for the earnest monies. The buyer then filed suit against his agent, declaring that the agent failed to seek a longer extension. This claim was defended at a cost for over \$19,700.

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Claim Examples (continued)

▶ Wrongful Eviction

A single mother leased a second floor apartment in a two-story home with her young daughter. After three years, an issue arose with the electrical wiring in the apartment. The tenant repeatedly refused to allow repairs into her apartment. When the electricians finally gained access, they realized that the entire electrical panel needed to be replaced as well as all of the wiring in the tenant's apartment. The landlord decided to use these repairs as an opportunity to gut the entire apartment while leaving the downstairs apartment alone. He had his real estate agent serve the tenant a notice to vacate. After unsuccessful attempts were made to have the tenant vacate their apartment, the landlord obtained an eviction order from the magistrate judge. The tenant retaliated and filed a wrongful eviction suit, claiming she was evicted because she had her child living with her, since the other tenant was not evicted. Defense costs were over \$21,900.

▶ Discrimination

An African American woman contacted a real estate agent about a rental apartment, and arrangements were made to view the apartment. The woman liked the apartment and took home an application to complete and return back to the real estate agent. When the woman contacted the real estate agent to arrange an appointment to bring in her completed application, the agent told her the apartment was no longer available; the landlord had told the agent that he had rented to another applicant even though this rental had fallen through. Meanwhile, when the original tenant who was still looking for an apartment went online and saw that this unit was still available she filed a racial discrimination complaint against the real estate agent with her city's Commission of Human Rights. The total cost to defend this claim was over \$8,600.

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