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**Maylie & Grayson** is a full service law firm providing representation to real estate brokerages, licensees, local Realtor® organizations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters.

### **You Ask, We Answer - Common Legal Questions**

As a result of changes in the industry and articles we have published, our office frequently receives questions from clients and Realtors® regarding various real estate topics. This article will address several recent questions.

#### **Buying Your Own Listing**

**Question:** I have listed a house for sale on behalf of a client. Upon listing the house, I decided that I would like to offer to purchase the house from my client, as it was favorably priced and located in a desirable neighborhood. Am I exposing myself to risk when I buy my own listing?

**Answer:** Oregon Revised Statutes Chapter 696 states that real estate brokers owe their clients affirmative duties, including dealing honestly and in good faith, maintaining confidentiality, loyalty and disclosing conflicts of interest. As listing agent, you may have obtained confidential information from your client that you must not disclose to potential buyers. As a potential buyer, you would be unable to fulfill your affirmative duties to your client, as your interest in obtaining the property at a favorable price may be directly adverse to your client's interest in selling the property at a higher price. In addition, it would be impossible for you to ignore confidential information that your client had already disclosed to you. Representing both your client and yourself in a transaction creates a conflict, and may lead your client to believe that he or she was not properly advised or represented in the transaction.

A real estate broker who wishes to purchase his or her own listing would be well advised to withdraw from representation prior to submitting an offer to purchase the property. In addition, the real estate broker should advise the client in writing that he or she should seek alternate representation and advice from a third party.

#### **Acreage Discrepancies**

**Question:** While completing an RMLS listing on behalf of a client, I noted that the property was 3 acres in size, based on my review of a Metrosan report. After listing the property, I reviewed

another Metroscan report, which listed the property as being 3.5 acres in size. What should I do in this situation?

**Answer:** Disclose, disclose, disclose! Real estate brokers are not required to determine the size and dimensions of a lot. However, should a real estate broker discover conflicting information about a listing, he or she should immediately disclose the conflicting pieces of information to the seller and all potential buyers. A broker's failure to disclose conflicting information may bring about liability for the broker and the client.

### **Builder Sale Agreements**

**Question:** I represent a client who is considering buying a new home from a local builder. It is my understanding that many builders require offers to be presented on their own forms, which differ from the standard OREF sale agreement. Should I advise my client to make an offer on the standard OREF sale agreement? How might the builder's forms differ from the OREF sale agreement?

**Answer:** Builders who have created their own forms typically require buyers to present offers using these forms. Should a buyer submit an offer on the OREF sale agreement, the builder may request that the buyer resubmit the offer using its own form. There is nothing inherently wrong with your client submitting an offer using the builder's form. The builder's forms will be customized for the builder, and may differ substantially from the OREF sale agreement. In some cases, a builder's forms may provide greater protections to the builder than to your client. Therefore, you should ensure that your client has reviewed the builder's forms, and understands that they may provide for different protections and remedies. In addition, you may wish to advise your client in writing that he or she should address legal issues with legal counsel. An additional important safeguard is obtaining a written acknowledgment from your client that he or she has reviewed and understands the forms, and has addressed legal issues with counsel.

### **Condominium Bylaws**

**Question:** Many of my clients have expressed interest in purchasing condominiums. However, I have very little experience with assisting clients in buying and selling condominiums. What issues should I be aware of, and how should I advise my client?

**Answer:** You may wish to first determine whether your clients have any special interests or requirements for a condo, such as operating a business from there or renting to a third party. Condos are governed by condominium associations and by recorded covenants ("CC&Rs"), conditions and restrictions. Associations adopt bylaws, which set forth rules for ownership and use of the condos, such as whether they may be rented or used for businesses. Some condominium associations restrict the percentage of condos that may be rented to third parties, and restrict the use of the condos to personal use rather than business use.

It is absolutely crucial that your clients review CC&Rs and bylaws for any condominiums they are considering purchasing so that they may determine whether the condominiums will fit their needs. You may wish to advise your clients in writing that any questions regarding the CC&Rs

and bylaws should be addressed by their legal counsel. It is also important to review financial records, meeting minutes, and the status of any potential assessments, as these may greatly impact the costs of condo ownership.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at [joelgrayson@mayliegrayson.com](mailto:joelgrayson@mayliegrayson.com) or by mail at 7959 SE Foster Road, Portland, Oregon 97206.