

8. Real Estate Agent Disclosure Violations

Background

The property owners operated a family farm. A real estate agent approached the property owners and convinced them to sell their farm to an investor. The investor had previously hired the agent as project manager of a proposed commercial development project. Because of the farm's proximity to a municipality and freeways, the farm was a critical part of the proposed development project. Ultimately a sales price of \$7M+ was negotiated for the farm, in addition to a large commission for the agent.

The agent did not disclose to the homeowners his existing business relationship with the investor who planned to develop the farm. The agent did not furnish the required real estate agency disclosure statement at the beginning of sales discussions that would have defined his role and duties to the homeowners.

The purchase agreement for the property stated that the agent was a "facilitator" in the transaction. State law required that this mandatory disclosure information be provided by real estate salespersons at the point of first substantive contact with residential buyers or sellers.

Issues

Had the agent presented the required disclosure statement, which identifies types of representation available to consumers in real estate transactions, the homeowners could have made informed decisions about how and by whom their interests would be represented. However, the homeowners believed that the agent was acting as their agent in the transaction.

The Showing Contract and the appellation "facilitator" in the purchase agreement prepared by the real estate agent was inappropriate, given the failure of the agent to provide the required Agency Disclosures. Because the agent presented these two agreements out of the required sequence of agency disclosure/agreements and without the requisite Agency Disclosure forms, the real estate agent's role and obligations to the homeowners were concealed.

Outcome

Landmark Real Estate Research, Inc. prepared the Expert Report and Analysis of the agent's standard of care and duties. The case is in court, with Dr. Musil scheduled to testify regarding his findings.