

7. Real Estate Agent Standards of Care

Background

Two real estate agents from the same real estate brokerage served as dual agents in a transaction. The purchase agreement noted the broker's fiduciary duties to both the buyers and the sellers. The definitions of the fiduciary duties owed to the buyers by the real estate agents were identified in the Agency Relationships in Real Estate Transactions, a disclosure form, which accompanied the Contract for Exclusive Right to Represent Buyer.

The Purchase Agreement, Agency Relationships in Real Estate Transactions disclosure form, and the Contract for Exclusive Right to Represent Buyer were all signed on the same date. The Agency Relationships in Real Estate Transactions disclosure form should have been provided to and signed by the buyers when they first started working with the real estate agents.

After a home inspector examined the property, the agents prepared an Addendum to the Purchase Agreement stating that “ [the] humidifier & air conditioner/furnace to [sic] be professionally serviced. Humidifier filter * necessary repairs taken care of by seller* see heat pump comments page 5 of inspection report.”

The buyers experienced multiple and costly problems with the furnace, humidifier, heat pump, and related damage to the property.

Issues

The agents violated state disclosure requirements and industry practices by not providing the agency disclosure form to the buyers at an earlier date.

The agents violated their duty of reasonable care by failing to take more specific steps regarding defective items within the house. Common industry practice, especially in light of issues identified in the inspection report, is for the agents to prepare an addendum which would require a furnace certification for a home sale. The purchase agreement addendum prepared by the agents simply suggested that the defective items be “professionally serviced.”

Outcome

Dr. Musil prepared a report on this dispute. The case settled in favor of the buyers.