



The Role of the Real Estate Agent

By Jim Doyle

Jim Doyle is REIX defence counsel in Alberta, but the same principles apply to our subscribers in Saskatchewan. SRA and SREC provide forms in Saskatchewan.

As the calendar turns to a new year, it is often a good time to reflect on some of the basic principles that are vitally important to the practice of every truly professional real estate agent.

The relationships between licensed real estate agents and their clients are the very relationships that created this industry. In turn, the fiduciary obligations owed by an agent to their client are the bedrock of that relationship.

When deciding any dispute between an agent and client, our courts will evaluate the nature and scope of the fiduciary relationship on a case-by-case basis. However, some common principles have become clearer over time.

As you might expect, REIX has been involved in a great many of these cases over the decades. A recent successful REIX defense of Alberta agents has helped us to further clarify the essential elements of the fiduciary duties owed by every agent in Alberta.

While each case is assessed on its own facts, we know that every fiduciary obligation owed by you to a client has its origin in the confidential nature of the relationship that begins the moment you are engaged by your client – regardless of whether that client is a seller or a buyer.

From that moment forward to the conclusion of your relationship (hopefully following a successful transaction!) your client is entitled to EXPECT that you will faithfully promote that client's best interests even when those interests may conflict with your own.

What this means, from the perspective of our courts, is that your client will be expected to rely on your expertise. What then are the areas of expertise in question? While this should be second nature, the short answer is: the areas in which you have been trained and licensed.

To be clear then, your client is ENTITLED to rely on your training and licensing throughout your dealings. That reliance by nature puts your client in a position of very special vulnerability should you breach your fiduciary obligations. That is why the core elements of that obligation – namely the client's trust, confidence and reliance on your expertise – must always be fulfilled.

Know Your Limits

A sometimes-forgotten component of this obligation is your responsibility to ensure that your client knows not just the fullness of your expertise but also its limits.

For example, a professional real estate agent should not (absent those technical certifications) be giving structural engineering advice. To even attempt to do so would be an immediate breach of your fiduciary obligation to your client. In short, the rule is that if you lead your client to believe that you have certain expertise, they are entitled to reasonably rely on you with respect to that purported expertise.

Another general principle that arises within your client relationship in your fiduciary obligation to disclose relevant facts within your knowledge that would materially affect your client's decision-making process.

There is also a general expectation that the real estate transaction that results from your involvement must, at its core, be a reasonable one that properly accounts for your client's best interests. It must be, as our courts say, a "righteous" transaction.

It is also important to remember to whom your fiduciary obligations are owed. If both sides of the deal have their own agents, your fiduciary obligation is owed to your client alone. Should you become involved in both ends of a transaction, your fiduciary obligations become both more complex and will be owed to both sides of the deal. Beware.

Finally – at least for now – you must also be aware that the content of your fiduciary duty can be both clarified and to some extent modified by agreement between you and your client. Your AREA standard form representation agreements each specifically address elements of your fiduciary obligations when they set out the duties and obligations owed by you and your broker to your clients.

Every true professional will understand and fulfill these obligations in every client interaction.

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