

REIX

September 28, 2023



Avoiding Defective Documentation Risks in Real Estate

This is the second in a three-part series taking a closer look at the top three causes of loss – [financial mishaps](#), defective documentation and property condition.

Defective documentation is one of the three top causes of claims against agents. To protect yourself from being sued, be mindful that accurate documentation is one of the keys to a successful, claims-free real estate practice. This is the second installment in a three-part series examining the top causes of

lawsuits against licensees and registrants.

Whether you're drafting an Offer to Purchase, reviewing a lease agreement, inserting the legal description of a section of land, or working on a condo deal that includes a parking spot, be aware that careless errors can trigger financial claims and lawsuits.

Steer clear of defective documentation pitfalls by being vigilant about:

Access Prior to Close: This is when agents allow buyers access to the property prior to possession date and those buyers begin storing belongings, or altering or renovating the property, even though that was not agreed upon in the Purchase Contract or any other documentation. REIX recommends that if sellers agree to having the buyers access the property early, that their intention and any work they want to do is agreed upon in writing and signed off by both parties.

Chattels/Appliances: This is where chattels/appliances are either removed by the seller on possession date, or are not in the same working order as the buyer thought they were in at the time the offer was made. REIX recommends that agents take the time to review the list of chattels/appliances with their clients so that they are well aware of what's included in the purchase of the property. REIX also recommends that agents advise their buyers to have the items inspected or tested to ensure that they are in normal working order. It is also recommended that agents verify with the sellers if there is anything to disclose regarding the chattels/appliances with buyers, and if so, that disclosures are made upfront.

Incomplete Sale: This refers to transactions that were initially firm but later collapsed due to a variety of reasons, including financing or buyer/seller's remorse. REIX recommends that agents verify all of their instructions in writing (via email) and

they communicate effectively and promptly.

Lease Agreements: These refer to disputes arising from errors in lease agreements, such as disagreements over responsibilities for utilities, landlord-tenant duties, and lease terms. REIX recommends that agents verify instructions in writing (via email) and ensure that their client is well aware of what they are agreeing to. Misunderstanding and miscommunication can lead to financial claims and lawsuits.

Legal Land Description: This refers to inaccurate or misrepresented descriptions of the property, Title or Real Property Report (RPR) leading to buyer dissatisfaction or seller's inadvertent misrepresentation. REIX recommends that agents review documentation with their client to ensure that both the agent and the client are aware of the descriptions and registrations on the documents; that both the agent and the client understand them; and that the parties address any potential errors, non-compliance or disclosures that need to be made.

Lot Size/Location: This refers to claims related to discrepancies in land size and boundaries, or the inclusion of unexpected features, such as waterways, affecting property dimensions. REIX recommends reviewing documentation with the client to ensure that both the agent and the client are aware of the descriptions and boundaries on the documents and understand them well. If something is unclear, it may need to be verified and disclosed.

Parking Arrangements: This refers to errors concerning titled parking stalls, including discrepancies between listing representations and actual inclusions or inadequate garage space. REIX recommends verifying the information with the seller and actually viewing the parking stall to ensure that it is the correct one and whether it is underground or a surface-level spot. The same applies for garage spaces.

Square Footage: This concerns disputes arising from inaccuracies or misrepresentations in property square footage. REIX recommends having properties measured by a third party professional measurement company. By doing so, any representation surrounding square footage is made by the third party professional measurement company and not the agent.

Subject Clauses: This refers to issues stemming from incorrectly drafted subject clauses in contracts, impacting the transaction's conditions. REIX recommends that agents review all subject clauses with their clients to ensure they understand the clause. Additionally, the clause should be specific and clearly explained to both parties.

REIX emphasizes the importance of avoiding defective documentation. Real estate professionals must ensure their documents are error-free and accurately convey information to all parties involved. Failure to do so may result in legal liability.

To prevent defective documentation, REIX recommends the following proactive measures:

1. Review contracts and documents thoroughly with clients.
2. Double-check all work for accuracy.
3. Confirm verbal instructions and all conversations in writing via email.
4. Have clients initial every page, including MLS feature sheet and title.

Real estate agents facing uncertainty regarding documentation should seek assistance from their Broker and promptly [contact REIX](#) if legal issues arise.

A Passion for Risk Management

Do you like what you have just read? Are you passionate about

risk management in real estate and ready to challenge yourself in a new way? If so, we encourage you to [apply for the REIX Risk Management Program Advisor role](#).

Join our dynamic team and make a meaningful impact in the world of real estate risk management. Your expertise and knowledge could be the perfect fit for our organization. Don't miss out on this exciting opportunity to shape the future of risk management. Apply today and embark on a rewarding journey with us!

The [Real Estate Insurance Exchange \(REIX\)](#) provides mandatory errors and omissions insurance to over 17,000 Alberta and Saskatchewan real estate industry members and nearly 1,250 brokerages. We're dedicated to providing high value to our subscribers through exceptional claims, risk and financial management. Follow us on [Facebook](#) and [LinkedIn](#)!

All content copyright © 2023 Real Estate Insurance Exchange

Real Estate Insurance Exchange
#205 – 4954 Richard Road SW
Calgary, AB T3E 6L1

Want to change how you receive these emails?
You can unsubscribe from this list.