

Material Changes

The times they are a-changin'. Of course, that Bob Dylan song spoke to social unrest and change in the 60's, but things also are constantly changin' in the fast-paced world of real estate transactions.

When is an agent obligated to disclose transactional change? There are two particular sources of such a duty of which I want you to be aware:

First, VREB regulations provide, at 18 VAC 135-20-310, as follows: "Actions constituting improper delivery of instruments include: ...2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction...." Surprised? I thought so. This is fairly broad language and would seem to encompass many circumstances we take for granted (and may not always disclose, timely or otherwise). For example, short sale declination, financial changes, title problems, repair problems, closing date issues, contingency removal issues, etc.

Second, with respect to changes, the REIN Standard Purchase Agreement only provides that ""Buyer shall notify Seller ... in writing ... of the occurrence of any material adverse change in Buyer's financial condition which prevents Buyer from obtaining the specified financing...." Thus the contract imposes no more duty upon the agent to report transactional change than that imposed by the regulations. Note also that this particular duty to report material change is imposed upon the buyer and not the agent.

The language above concerns your potential duty to report to the other party and agent, not to report information to your client. As to your client you owe a much higher duty of disclosure: The Board says the agent must disclose to her client all material facts concerning the transaction when the failure to do so would constitute negligence. Note that dual agency can affect this requirement, however. Virginia courts have consistently held agents to a very high standard of disclosure to one's principal of material and relevant information known to the agent.

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Legal Corner

Simple principles of honesty, forthrightness and diligence generally provide the answer to disclosure questions, but when you are not sure if you have a duty to disclose, discuss the matter with your broker and lawyer, because as Dylan cautioned that “you better start swimmin', or you'll sink like a stone, For the times they are a-changin'.”

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