

NOW YOU'VE DONE IT!

You are in trouble, with a capital T, in VPAR City! You messed up, done the wrong thing, chose the wrong path, forgot the rules or didn't understand them, and generally have managed to make everyone in your professional world hate you: your broker, your client, and the other agent. Even your dog hates you.

I have represented agents locally and across the state in ethics matters, VREB proceedings, procuring cause disputes, and in malpractice cases, and so I thought I would take a moment and give you the benefit of my thoughts and experience regarding avoidance.

First, calm down. There is nothing worse than having someone accuse you of having done something wrong, particularly something that could cost you your license, and so most agents, in my experience, are too emotional, don't think clearly, and often react the wrong way, whether in anger or in fright, and all too often do or say something that makes things worse.

Second, talk to your broker or an experienced agent for advice and help. Get that help early, not when you've made the client so mad they've already filed the complaint. If it is truly serious, or you're not sure how serious it is, then come see me or one of the other lawyer affiliates for help.

Third, try to resolve the dispute or solve the problem *before* it gets to the complaint stage. Despite this seemingly slap-your-forehead-obvious advice, you would be surprised how often agents, particularly inexperienced ones, simply stick their head in the sand and hope the problem will go away. They don't want to confront it. They don't want anyone (especially their broker and client!) to know they've messed up. Rarely does a problem go away or solve itself, however, and so by playing ostrich you may well have lost the ability to get the problem resolved at all. And that inaction may well make a difference come disposition time if there is a founded complaint.

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Legal Corner

Fourth, speak – *reasonably and with some empathy* – with the upset person, or better yet, get your broker to do so. I would encourage firms to have an ombudsman for this purpose. Quite often, all someone wants to do is vent and obtain recognition from someone that things could have been handled better. Perhaps they want an apology. It is when they feel like they are being stonewalled or dismissed that they feel compelled to file a complaint or lawsuit. If the matter is truly potentially serious, however, do talk to your lawyer first because I would not want you to make any admissions that could be used against you later.

Fifth, in appropriate circumstances, suggest mediation, whether formal or informal, in an attempt to resolve the problem. Goodwill means something, so be open and willing to compromise. I have had some luck in these circumstances in me sending the person a letter, not one designed to assert aggressively my agent's position, rather one designed simply to explain it. The dialogue that often ensues can diffuse the situation.

Last, be realistic and don't beat yourself up over it. You made a mistake. It happens to the best of us, and you really are human despite what FSBOs think. Please email me at bdlytle@lytlelaw.com if you have questions, comments, or article suggestions.