

### ORDINARY PEOPLE

Your man on the legal corner, oft accused of making obscure, funny, clever references (at least I find them to be such), is not referring to the movie, nor am I suggesting we have dinner at that fine dining establishment in Gloucester. Rather, I want to talk about the duty you owe to your clients.

Va. Code § 54.1-2131 provides that agents are obligated to exercise “ordinary care” in the exercise of the agent’s duties to his or her client.

Well, what does that mean? Black’s Law Dictionary defines “ordinary care” as “that degree of care which ordinarily prudent and competent persons engaged in the same line of business or endeavors should exercise under similar circumstances.” In other words, ordinary care is what a reasonably prudent agent would do under the same or similar circumstances.

Let us suppose then, that in representing your client something goes wrong or there is a mistake that causes your client to suffer or be injured. The broad question, assuming there are no other factors imposing liability, would be whether other agents would have done what the client alleges you failed to do.

If for example, the general practice among listing agents in this area is to measure the square footage of the house in order to arrive at a listing price, then it might well be negligence (read: a breach of ordinary care) if a failure to do so caused the property to be sold for less than fair market value. Similarly, if you mis-measure the property and recommend and offer the property for less than it should have been offered, then you will have performed negligently. What if, as a buyer’s agent, you didn’t measure the house to confirm what the MLS told you and your client about square footgag? If reasonably prudent buyer’s agents do not do that, and I do not think they do in our area, then you would not be guilty of negligence.

## Legal Corner

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My experience has been that the most likely source of conflict and potential liability between agents and clients arises when a client suggests that the client's agent either had information and failed to disclose it or did not obtain information that would have been important to the client. A fairly recent Virginia Circuit Court case, *Monica v.. Hottel, Trustee* (Lowden County 2004) addressed our issue in a procedural context.

The court noted that while the General Assembly has re-written the law of agency insofar as it applies to real estate agents and refused to impute knowledge or information among or between clients and licensees, the law still permitted an agent to be found negligent for not discovering and disclosing information that a reasonably prudent agent would have discovered and disclosed in the exercise of ordinary care. The *Monica* case involved discovering and disclosing the status of a subdivision affecting the property and client in question.

The lesson here is to stay informed and abreast of current developments. Go to company and VPAR training. Go to Night Court. Familiarize yourself with local practice and custom by talking to your peers. Ask experienced agents what they do. Talk to your broker. That training and education is key to an understanding of what the reasonably prudent agent would do under the same or similar circumstances.

You are required to provide ordinary care. (Can you imagine the marketing slogan: "Hey, let me handle your listing. I'll give you ordinary care!). I would encourage you, however, to provide *extraordinary* care, because by so doing a client will ever be hard pressed to claim you have failed to represent them ordinarily.

You may contact the author at [bdlytle@lytlelaw.com](mailto:bdlytle@lytlelaw.com) if you have any questions or comments on this or any other topic, and I am always looking for topics!