

Disclosure in Real Estate

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6 Hour Course Outline

COURSE DESCRIPTION:

This course encourages general awareness of the broad and ever expanding areas of potential risk to real estate brokers requiring effective disclosure. This is especially true because the tort system in New Mexico hold broker's under certain circumstances responsible to know "what they should know." For this reason disclosure responsibilities cannot be overlooked. Consumers need to make an informed decision when selling or buyer properties in many areas which may lie beyond a layperson's expertise, to ask, to know and to decide. Use is made of select video clips and PowerPoint slides.

Attendees apply and demonstrate understanding of disclosure responsibilities required by New Mexico Real Estate License Law, the Realtor Code of Ethics and good business judgment.

TEACHING TECHNIQUES:

L=Lecture, PP=PowerPoint slides, V=Video clips and GE=group exercises.

LL LEARNING OBJECTIVES

- 2 Attendees will describe background from caveat emptor disclosure requirements
- 1 Attendees will learn the three areas of common law that impact real estate practice
- 1 Attendees will become familiar requirements for disclosure from various sources
- 2 Attendees will be able to name major items that buyers and sellers need to be told
- 2 Attendees will be able to explain HOA, PID and FIRPTA issues
- 1 Attendees will be able to identify the top 10 Code of Ethics disclosure requirements

General Introduction: Instructor, attendees and course objectives	10 minutes
I. Introduction	60 minutes
II. Disclosure Strategies Class Discussion	30 minutes
III. Legal Foundation of Broker Liability	30 minutes
IV. Key New Mexico Decisions on Tort and Agency	30 minutes
V. Aspects of Tort Misconduct and Remedies	60 minutes
VI. Seller Disclosure	30 minutes
VII. Psychologically Impacted Properties--to Disclose or not!	30 minutes

VIII. Various RANM Forms and Disclosures	30 minutes
IX. Creative Use of a Proprietary “Buyer Information Package” –Pre-Disclosure	30 minutes
X. NAR Code of Ethics and Sixteen Important Disclosure Requirements	20 minutes

General Introduction: Instructor, attendees and course objectives 10 minutes

I. Introduction 60 minutes

- A. Background of Disclosure Concern and Responsibilities
- B. Actual Knowledge and Should Have Known
- C. Effective Documentation
- D. What not to Disclose
- E. Five Elements of Effective Disclosure
- F. Breadth of Disclosure Items
- G. Understanding the Significance of Material Fact
- H. Disclosure Red Flags and Consumer Consent
- I. Potential Failure for Cooperating Brokers to Appropriately Disclose

II. Disclosure Strategies Class Discussion 30 minutes

- A. Timely
- B. Complete
- C. Recipients
- D. Written
- E. Acknowledgement

III. Legal Foundation of Broker Liability 30 minutes

- A. Statutory, Regulatory and Professional
- B. Common Law of Tort: Fraud, Negligent Misrepresentation and Negligence
- C. Common Law of Contract
- D. Common Law of Agency
- E. Consequences for Failure to Disclose—Damages, Penalties, Rescission, Loss of Professional Credentials

IV. Key New Mexico Decisions on Tort and Agency 30 minutes

- A. Neff v Bud Lewis
- B. Amato v Rathbun
- C. Gouveia v. Citicorp
- D. Moser v Bertram
- E. Robertson v Carmel Builders

- V. Aspects of Tort Misconduct and Remedies 60 minutes
- A. Intentional Misrepresentation is Fraud---Active and/or Passive
 - B. Negligent Misrepresentation—is speaking without knowing
 - C. Negligence—forsaking a duty by neglect
 - D. Three Levels of Court Involvement: Trial, Appeals and Supreme
 - E. Three Main Tort Cases in New Mexico affecting Real Estate
- VI. Seller Disclosure 30 minutes
- A. Not required by Law or Regulation in New Mexico
 - B. Historical Intention was for Sellers to Assist Brokers in Making Disclosures
 - C. Seller Input: Tell Brokers about Seller’s Actual Knowledge—without Research
 - D. Seller’s Lead Based Paint Disclosure and Renovate Right
- VII. Psychologically Impacted Properties--to Disclose or not! 30 minutes
- A. 47-13-1-3 NMSA 1978
 - B. Exemption for Everyone
 - C. Brokerage’s Best Practice
 - D. Information is “Everywhere” already!
- VIII. Various RANM Forms and Disclosures 30 minutes
- A. Broker Duties
 - B. Property Tax
 - C. FIRPTA
 - D. Renovate Right
 - E. Septic Systems
 - F. Water and Wells
 - G. Clandestine Drug Laboratories
 - H. Homeowner Association Disclosure
 - I. Public Improvement District Disclosure
 - J. Property Disclosure Statement—Delivery, Comprehension and Response
 - K. Etc.
- IX. Creative Use of a Proprietary “Buyer Information Package” –Pre-Disclosure 30 minutes
- A. Buyer’s Generally are the Most Likely to Assert “They Were Not Told”
 - B. Provided Buyers before any Offer to Purchase is Written
 - C. Provides Information Items of nearly 30 Potential Concerns for Buyer
- X. NAR Code of Ethics and Sixteen Important Disclosure Requirements 20 minutes