



With the economic boom of a decade ago and the resultant bust we are experiencing now, real estate claims have been on the rise. Deals that would have been lucrative in the boom economy instead resulted in major losses, and investors want someone to blame. Foreclosures and refinances are also on the rise, along with related malpractice claims for various reasons, such as drafting errors, title search mistakes, and lien priority issues. It is important to manage your real estate practice to minimize malpractice risks.

TIP #1: Avoid Conflicts of Interest

It can seem that when everyone wants the same thing in real estate transactions, the parties can streamline the process by using only one lawyer to close the deal. Be careful. While joint representation of a buy and seller in a real estate transaction is not prohibited, there are instances when it is not permissible (and many more when it is ill advised). Be sure you fully understand the relationships between and among the parties, and discuss potential conflicts with them, before agreeing to represent more than one party to a transaction.

Remember that even when parties agree on all the terms and simply need the lawyer to reduce those terms to writing, there may be conflicts and the lawyer cannot avoid malpractice liability by claiming he was merely a scrivener for the deal. It is important that engagement letters make it clear what you have agreed to do, who you represent, and who you don't. And as always, be very careful when considering entering into business or real estate ventures with clients.

TIP #2: Supervise Nonlawyer Staff

While it makes no sense to utilize nonlawyer staff, especially for the high volume routine paperwork common in real estate practice, if a law firm has a poor nonlawyer staff to lawyer ratio, the potential for malpractice increases exponentially. ABA model Rule 1.1 on competency and Rule 5.3 on supervision make the lawyer responsible for work done by nonlawyer staff. This means the lawyer should always review all work done by nonlawyers to ensure no mistakes are made. Even though some transactions are very similar to others, avoid routine and volume-based mistakes by being certain to adequately address each client's individual needs and communicate with the client.

TIP #3: Avoid Burnout

Controlling the volume and pace of your practice is critical to your personal and professional life. It is important to know your limits. Realize that while additional staff delegation can help your practice run more efficiently, you still need adequate time to supervise the work of nonlawyers.

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