

Agent's Obligation to Protect Public from Mortgage Fraud



By Brian Madigan LL.B.

An agent is not able to simply discount the interests of the public. A real estate agent has a general duty to act professionally and protect the public from mortgage fraud.

That was the lesson learned by an agent recently who permitted certain parties to deceive the bank by “over-listing” the property.

The matter came before the discipline committee of the Real Estate Council of Ontario (RECO) which assessed a \$7,000 fine on consent. The agent acknowledged the impropriety of the conduct.

How did this problem arise? The bank lent some money by way of a mortgage. It checked the MLS records and found that the property was listed for \$229,000. Yes, it should have conducted its own due diligence. It should have retained its own appraiser. But nevertheless, it wasn't expecting that the property was only worth \$65,000. That, it found out when the property went into foreclosure.

The agent went along with a scam. The agent should have been smarter, more astute and a little less naïve. The agent was contacted by a client who introduced him to the seller. He inspected the property and thought it was worth about \$100,000. The seller wanted to list at \$229,000, a figure that would have grossly exaggerated the value. The agent went along with this and agreed to a six month listing from 17 November 2005 to 17 July 2006.

On 25 November 2005, the seller entered into an agreement to convey the property to a buyer for \$225,000. It was not done through the agent or the brokerage. In fact, there had been no showings.

The allegation of **professional misconduct** was:

- a) he listed the property at a price that he knew was overly inflated,
- b) he did not do what a reasonably prudent registrant would have done to avoid allowing his services, including authorizing MLS listings that included grossly inflated property value to be used for improper purpose.

The disciplinary panel found that the agent was in breach of certain ethical guidelines, more particularly, breaching the following Rules of the RECO Code of Ethics:

Rule 1 – Ethical Behaviour

A Member shall:

- (2) Endeavour to protect the public from fraud, misrepresentation or unethical practice in connection with real estate Transactions.

Rule 10 – Misrepresentation or Falsification

A Member shall not make any statement or participate in the creation of any document or statement that the Member knows or ought to know is false or misleading.

Rule 42 – Competence

A Member shall render conscientious service with the knowledge, skill, judgment and competence, in conformity with this Code of Ethics and the standards which are reasonably expected of Members. When the Member is unable to render such a service, either alone or with the aid of other Members, the Member shall decline to act.

Rule 46 – Unprofessional Conduct

A Member shall not engage in an act or omission relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by Members or the public as disgraceful, dishonourable or unprofessional.

It should be noted that although this matter was not considered until December 2008; the applicable rules of conduct applied to the facts were those that were in effect prior to the revisions to the *Real Estate and Business Brokers Act, 2002* and the Code of Ethics passed as a Regulation under the Act.

There are similar but slightly different provisions that would apply today.

The point is quite simple if you are a real estate agent: Don't get duped! You are a professional. You are supposed to act professionally in an independent capacity. Others could rely to their detriment upon your "advice". And, while this agent never actually told any particular person that the property was worth \$229,000, he in effect told the whole world that such a listing price was within the realm of an appropriate listing price. In fact, it was simply a crazy number picked out of the air. Moreover, it was selected by the seller for the purposes of perpetrating a mortgage fraud on the bank.

So, be careful. Do not participate in such foolishness, otherwise you will be subject to disciplinary proceedings.

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