



What are an agent's duties regarding HOA documents?

Release Date: 06/14/2018

[Bill Gifford](#), Martin & Gifford, PLLC

QUESTION: A new agent in my firm told me that she was taught in her prelicensing class that buyer agents are required to obtain copies of any declarations, restrictive covenants and bylaws of the homeowners' association for properties their clients are purchasing and furnish those documents to their clients. Is that correct? What are an agent's duties regarding these "HOA documents"?

ANSWER: The Real Estate Commission does not consider the furnishing of HOA documents to be an obligation of licensees, either listing agents or buyer agents. The Commission's 2008-2009 Update Course materials on Material Facts, which are still available under the Publications tab on the Commission's website, includes the following statement: "[L]icensees generally are not expected to routinely obtain and provide copies of the applicable restrictive covenants from the Register of Deeds office."

A more recent publication on the Commission's website is the 2016 version of its Q&A brochure on Condos & Townhouses. One of the questions in that brochure is whether the closing attorney or real estate broker will furnish the homebuyer with a copy of the declaration, restrictive covenants and bylaws of the HOA. The answer given is "Not necessarily... If a real estate broker is assisting you in your purchase of a condo or townhouse, the broker may be able to obtain a copy of these documents." This word choice suggests that it is not mandatory for brokers to obtain these documents.

Even though obtaining and furnishing HOA documents may not be required, there is no question that the existence of restrictive covenants is a material fact that a listing agent has a duty to discover and disclose. How will the listing agent know if those documents exist? Both the Exclusive Right to Sell Listing Agreement (see paragraph 12(c)) and the Residential Property and Owner's Association Disclosure Statement require sellers to represent whether the property is subject to regulation by an owners' association or governing documents. Listing agents should review both of those documents with their clients.

On the buyer side, investigation of restrictive covenants and other HOA documents during the due diligence period is specifically covered in paragraph 4(b)(ii) of the Offer to Purchase and Contract. Buyer agents should definitely review that paragraph with their clients. They should also advise their clients, preferably in writing, of the importance of obtaining and reviewing HOA documents, and then consulting with their attorney with any questions that may arise.

NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. The services of a private attorney should be sought for legal advice.

© Copyright 2018. North Carolina Association of REALTORS®, Inc. This article is intended solely for the benefit of NC REALTORS® members, who may reproduce and distribute it to other NC REALTORS® members and their clients, provided it is reproduced in its entirety without any change to its format or content, including disclaimer and copyright notice, and provided that any such reproduction is not intended for monetary gain. Any unauthorized reproduction, use or distribution is prohibited.