



Do brokers have a duty to disclose material facts to a buyer's lender?

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QUESTION: One of my buyer clients is under contract and is using conventional financing to purchase his home. Closing is coming up in a few weeks and I thought everything was going smoothly. However, I just learned that my client got laid off from his job. Do I have any obligation to inform the buyer's lender of my client's job loss?

ANSWER: For reasons that are more fully explained below, we do not believe that you have an obligation to disclose your client's job loss to the buyer's lender.

In a situation like this, the first thing to consider is whether your client's job loss is even a material fact. Most agents know that material facts include "facts directly affecting the principal's ability to complete the transaction." Not all job losses meet this description. If you have reason to know that the client's employment income is not necessary to support the loan, or if you know that the buyer has the means to complete the purchase without a loan, then the job loss would not be considered material. On the other hand, if the buyer needs a loan to complete the transaction, and the job loss will likely affect the buyer's ability to obtain that loan, then the job loss is a material fact, and you have a duty to promptly report it to the listing agent.

Assuming that the buyer's job loss is material to the transaction, the next question is whether your duty of disclosure extends not only to the listing agent but also to the buyer's lender. The Real Estate Manual published by the NC Real Estate Commission states that the License Law duty to disclose material facts requires disclosure of material facts to "all persons with whom the broker deals." We asked a staff member at the Commission about whether, in their opinion, that phrase would ordinarily include a buyer's lender. The response was no and that, in their opinion, what the spirit of the disclosure rule requires is that material facts be disclosed to the parties to the transaction (i.e., buyers, sellers, landlords and tenants) and their agents. The staff member noted that while the buyer likely has a legal requirement to notify the lender of any job loss, the buyer's agent is not a party to the financial arrangement between the buyer and their lender.

Agents must recognize that, despite the foregoing answer, there are circumstances in which agents will have an obligation to inform a lender of certain facts. Specifically, if a broker becomes aware that false or misleading transaction documents have been submitted to a lender, the broker has a duty to inform the lender of that fact. Simply stated, all transaction documents submitted to a lender must accurately reflect the transaction. In one reported disciplinary case, an agent was disciplined for failing to notify the closing attorney or the buyer's lender that the seller had made a loan to the buyer to enable the buyer to purchase the property. As a result, that loan was not reflected on the closing statement provided to the lender.

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