

Representing A Seller Who Has Memory Lapses Or Who Has Trouble Completing Disclosures

Seniors are an important and growing segment of the home resale market. Whether they are downsizing after retirement, or moving to an assisted living situation, senior clients present unique opportunities and challenges for the REALTOR®.

You may find yourself representing a senior seller whose memory is fading, or who has mental challenges that interfere with his complete participation in the disclosure process. In an ideal world, the seller would place the property in trust or appoint a conservator and thus enjoy special protections under California law. You can suggest to your seller that he discuss these options with an attorney. But in the real world, these options are not always possible or even desirable. How do you protect yourself and your seller from a buyer's claims that the seller did not disclose material facts about the property? Here are some suggestions:

- You can recommend that your seller order an inspection at the time of the listing and attach the inspection report to the TDS. You can go one step further and recommend not just a home inspection by a qualified home inspector, but also an inspection by a licensed contractor who can opine on code compliance and who will do a search of county building and planning records and provide those as part of his report.
- The seller can add a disclaimer to the TDS saying that he may be unable to remember historical details about the property. You can explain to the seller that you will disclose this in your AVID as well. In fact, an argument could be made that this is a required disclosure if you believe the seller cannot remember defects. You can write that you are uncertain of the seller's ability to remember all material facts and that the buyer is strongly advised to obtain appropriate inspections.
- In addition to disclosure concerns, you can take steps to protect yourself from claims that you did not properly advise the seller, or that you took advantage of his condition. You can require a member of the seller's family or a trusted friend to attend all meetings. And as with all of your clients, you should follow-up in writing when you advise the seller on important matters such as disclosures, price setting, and negotiations.

Of course, memory problems and mental challenges are not confined to senior citizens. You can follow these suggestions any time you are concerned about your seller's ability to fully understand and participate in the sale process. Finally, if you believe that your seller is incompetent, not just forgetful, then you should not move forward with the listing or a sale until appropriate legal steps are taken to protect the seller and yourself.

Please speak with your broker if you have any questions on this topic.