



10 Do's and Don'ts to Know in a Real Estate Transaction

1. **As the listing agent, DO have the seller sign and verify the information that is submitted to the Multiple Listing Service.** Protect yourself and have the seller's sign the MLS report before you submit the information to your MLS.
2. **"Per Telephone Call" Signatures- DO NOT DO IT.** The buyer or seller should always sign all legally binding documents such as the purchase agreement or counteroffer. An agent's signature for their buyer or seller followed by the words "per telephone call" is not sufficient to form a legally binding document and will not stand up in court. Get a signature! We are in an age with fax machines at the tip of our hands. All aspects of a real estate transaction are critical, important items need to be signed by the buyer and seller.
3. **DO get a release agreement.** If you agree to a settlement or condition of the property, contact Risk Management to obtain an appropriately drafted Settlement and Release Form and have both parties sign. Often sellers will credit the buyers for a condition of the property. For the seller's protection, have the buyers sign a settlement and release form stating that a settlement of x amount of dollars was agreed to for x condition. With this form, the buyers are on notice that they have agreed to this dollar amount and therefore will not hold the sellers liable for damages later for that condition.
4. **Agents- DO your inspection.** Place yourself at the property. Even if the house is flawless, find something to write in the agent's portion of the TDS confirming your visual inspection at the property. **DO NOT** write only, "Buyer should get Physical Inspection" as the statement fails to prove your visual inspection.
5. **DO NOT go outside of your profession.** If you see a crack in the slab, simply write, "crack in slab". **DO NOT** try to guess what caused the crack. Do not perform inspections of inaccessible areas such as roofs, attics, and crawl spaces. Remember your job is to view accessible areas. If you represent the buyer and are advised that an issue may exist within an inaccessible area such as a roof, attic or crawl space, urge your buyer in writing to have the appropriate professional inspect the condition.
6. **Sellers- DO have the Buyers get a professional inspection.** It is advised to make it a condition of the sale of your property, the buyers have a professional home inspection completed by an ASHI or CREIA certified home inspector. **DO NOT** identify the specific inspector, rather merely require that the buyer select an ASHI or CREIA certified inspector. Inspectors from these agencies are held to a higher standard of care. **DO NOT** let the buyer skip a home inspection. Defects or conditions of the property that arise later, may come back to haunt the seller because it was not addressed before the transfer of the property.



7. **DO use a (3) Step Disclosure Process.** Anytime you are making a material representation as to the condition of a property and you do not know the statement is true for a fact, use the following process in written form. For example, if your seller represents a new roof was installed by a licensed contractor five-years ago, do as follows: **FIRST:** Identify the source of statement. **SECOND:** Disclaim verification and/or accuracy and validity of the third-party statement. **THIRD:** Urge Buyer to independently confirm the statement.

Under this example, the disclosure would state:

- (1) "Per Seller, a new roof was installed by licensed contractor 5 years ago."
- (2) "Agent has not, nor shall they verify Seller's statements as to the roof."
- (3) "Buyer is urged to perform their independent investigation to confirm Seller's statements as to the roof."

8. **DO consider the appropriate time frame for Notice(s) to Perform.** The Notice to Perform aspect of the purchase agreement is a very potent clause. Bear in mind that if the buyer agrees to the standard 24-hour notice period in the purchase agreement, this may later come back to haunt the buyer and buyer's agent. For example, if the notice to perform contains the standard 24-hour period, depending upon the buyer's and their agent's availability, they may both have enough time to consider removal of the contingency and default under this time period. As such, when representing buyers, consider using a longer period such as 72 hours.

9. **DO use the appropriate form for deposits subject to Contingent Upon Inspection Clause.** The Inspection Clause in a residential purchase agreement only applies to initial deposit monies. If your seller wants the buyer to increase their deposit with the increased deposit subject to the Inspection Clause, the purchase agreement mandates that the parties use the appropriate form. The higher the amount of the deposit, the greater the protection to the seller. Similarly, the lower the amount of the deposit subject to Inspection, the less money the buyer stands to lose if they inexcusably fail to close the transaction.

10. **DO call Risk Management.** As we know, several items pop up in the course of a transaction. If you face any situation that you are unsure of, do not hesitate to place a call to Risk Management to clarify the situation. The call may take as little as five minutes and save you several months in litigation as well as the payment of your deductible.