





BROKER

R R I S S K

Management

& CREATING A POSITIVE OFFICE ENVIRONMENT

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**MINIMIZING BROKER RISK,
PROTECTING THE PUBLIC-CASE**

Control
Anticipation
Shifting
Education



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CONTROL

ESTABLISH WRITTEN POLICIES

Policies and Procedures Manual
Independent Contractor Agreement
Real Estate Assistants Agency
Antitrust
Fair Housing



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CONTROL

TRAIN ALL AGENTS AND STAFF

- Train your agents and staff on how to identify and handle risk areas
- Establish reporting procedures in your company



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CONTROL ANTICIPATION

Anticipate problems and take measures to stop them before they happen!



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RISK SHIFTING INSURE IT!




Comprehensive Liability

Covers claims made by individuals who suffer bodily injuries or property damage

Errors & Omissions Insurance

Covers damages for professional services rendered on a day to day basis

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RISK SHIFTING *INSURE IT!*



Directors & Officers Liability Insurance
Covers alleged wrongful acts of the company's executives in their duties to the company

Property Insurance
Covers losses due to physical damage to property

Also Consider
coverage for loss of revenue
temporary relocating of business

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RISK SHIFTING *INSURE IT!*



Auto Insurance
Make sure your agents add the company on as an additional insured

Fidelity Insurance
Covers employer for money or property loss due to dishonest acts of employees

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RISK SHIFTING
DISCLOSE IT!

Agency 

Controlled Business Arrangement

Property Disclosure Forms

Environmental Hazards

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 **REQUIRED DISCLOSURES**

Agency

Controlled Business Arrangement

Property Condition Disclosure

Lead Paint Disclosure

Other Disclosures

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EDUCATION

Education and continual training for all of your agents and staff is vital.


Many insurance companies offer discounts or require risk management training in order to be insured.



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TYPES OF MISREPRESENTATION



Fraud

Active Fraud
Intentional Misrepresentation
Knowingly making false statements

Passive Fraud
Intentional Concealment
Intentionally failing to disclose a defect



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TYPES OF MISREPRESENTATION

Negligence

Negligent Misrepresentation
Relying of statements from others that are false where the broker through reasonable care should have known that they were false.

Nondisclosure
Failure to take reasonable care in discovering defects and disclosing them



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TYPES OF MISREPRESENTATION


Statutory Liability
State established laws that protect the public from unfair or deceptive practices

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OTHER DISCLOSURE ISSUES

Stigmatized property
Murder, suicide, haunting, illegal activity




- What is written in our regulations and code
- What the courts are ruling

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OTHER DISCLOSURE ISSUES



Latent defect
Hidden structural problems not readily discovered by visual inspection

Disclosure of AIDS or HIV positive occupants in a property unlawful practice

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COMPLAINT PROCEDURES

Internal Procedures

Have a policy in place on how to handle complaints from consumers

Designate a person in the firm that will be the contact person for consumers who have a complaint




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COMPLAINT PROCEDURES

Mediation



Is a process where all the parties voluntarily agree to meet to reach a mutually agreeable settlement.

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COMPLAINT PROCEDURES

Arbitration

An informal hearing in front of a neutral third party who through testimony and documents discovers the facts and renders a final solution.



Binding
Non-Binding

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COMPLAINT PROCEDURES



Get a Lawyer !




AREAS OF RISK




Agency

- Disclosure of Representation
 - Fiduciary responsibilities
 - The problems with Dual Agency Disclosed, Undisclosed





AREAS OF RISK



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Property disclosures

- Residential Property Disclosure Law
- Megan's Law
- Other items contained in the Property Disclosure Law
- Condo, HOA Disclosures & Agent responsibility



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AREAS OF RISK

Property disclosures

- Home Inspections
 - What happens if inspection causes contract to terminate and you list the property back on the market?
- No formal HOA but property has deed restrictions



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AREAS OF RISK

Environmental Issues

- Health Risks in areas
 - Radon, Asbestos, Mold, Lead Paint, EMF, UFFI, Contaminated Water Supply, Meth Labs
- Property Risks in area
 - Underground Storage Tanks, Defective Drywall, Landfills, Unstable Ground, Sink Holes (Limestone)

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AREAS OF RISK

Unlawful Practice of Law



- Giving advice of a legal nature
- What to advise your client

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AREAS OF RISK

Unlawful Practice of Law



- Giving advice of a legal nature
- What to advise your client

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AREAS OF RISK

Fair Housing

- Protected Classes
 - Federal, State, Local
- Establishing practices for working with public
 - All must follow firm established practices
- Prohibited Practices



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AREAS OF RISK


Antitrust Laws

- Price fixing
- Boycotting
- Allocation of groups or market
- Tie-In Agreements

Americans with Disabilities Act


- Employment practices




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AREAS OF RISK

A Final Thought on



Not a defense for a broker!

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Contact Me!

Allan Marteney