REAL ESTATE LAW
PURCHASE & SALE FOR RESIDENTIAL AND COMMERCIAL TRANSACTIONS
CONTRACT DISPUTES
LAND USE
LEASES/ ESCROWS
ZONING/ EASEMENTS
FORECLOSURE AND SHORT PAY
UNLAWFUL DETAINER
BROKER SUPERVISION

EMPLOYMENT LAW
EMPLOYMENT MANUALS
MANAGEMENT ISSUES
EMPLOYMENT CONTRACTS
LABOR BOARD PROCEEDINGS
UNEMPLOYMENT CLAIMS
HIRING/ FIRING/ DISCIPLINE
INVESTIGATIONS, DISCRIMINATION
TERMINATION

TRAINING / EDUCATION
BROKER SUPERVISION
CONTRACT FORMATION (RPA AND OTHERS)
PROPERTY MANAGEMENT
RISK MANAGEMENT

BUSINESS LAW
CORPORATIONS, PARTNERSHIPS, LIMITED LIABILITY COMPANIES
PLANNING/FORMATION/OPERATION
PURCHASE & SALE TRANSACTIONS
CONTRACTS

MEDIATION/ ARBITRATION/ LITIGATION
TRIALS/ APPEALS
EXPERT TESTIMONY/ CONSULTATION
ASSET PROTECTION & ESTATE PLANNING

ESTATE PLANNING

CHURCHES & NON-PROFIT ORGANIZATIONS

FAMILY LAW

BANKRUPTCY

IMMIGRATION

ADVOCATES FOR FAITH & FREEDOM

TRADEMARK
Broker/Agent Exposure:

- Property Owner’s Failure to Disclose
- Broker/Agent’s Failure to Disclose
- False Representations
- Omissions
Seller’s Common Law Disclosure Requirement

“[W]here the seller knows of facts materially affecting the value or desirability of the property which are known or accessible only to him and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller is under a duty to disclose them to the buyer. . . . Failure of the seller to fulfill such duty of disclosure constitutes actual fraud.” Lingsch v. Savage (1963) 213 Cal. App. 2d 729, 735.
Seller’s Common Law Disclosure Requirement

• “In the sale of property a vendor [seller] may be held guilty of fraud where he knows of facts that materially affect the desirability of the property and which he knows will probably not be discovered by the vendee [buyer].” Nece v. Bennett (1963) 212 Cal. App. 2d 494, 496.

• While the statutory duty applies only to residential property, a common law duty to disclose applies to the sale of any type of property. Stevenson v. Baum (1998) 65 Cal. App. 4th 159, 165.
Ach v. Finkelstein (1968) 264 Cal. App. 2d 667

Holding that purchasers of an apartment building were entitled to damages because the sellers did not disclose rent concessions given to tenants but rather inflated rentals above their true market value.
Seller’s Common Law Disclosure Requirement

Holding that sellers of commercial property had duty to disclose that the state was interested in buying the property for future development after the seller’s agent represented the state had no such interest.
Seller’s Common Law Disclosure Requirement

*De Spirito v. Andrews* (1957) 151 Cal. App. 2d 126

Holding the seller of a nightclub liable for nondisclosure when the seller did not disclose that the property did not have the required government permits to operate a particular business on the premises that the buyer intended to operate.
Seller’s Statutory Disclosures

• Civil Code Section 1103 Disclosures – NHD Form
  • Flood Hazard Areas, High Fire Hazard Areas, Earthquake Fault Zones, Seismic Hazard Zone
• Environmental hazards
• Common Interest Development Document
• Delivery of a DRE booklet regarding hazardous substances
• Death (In the Last 3 years)
• Groundwater Basin Comprehensive Notice
Seller’s Statutory Disclosures

• Asbestos
• MethLabCleanUp Order
• Certification of strapping of hot water heaters
• Delivery of earthquake guide for commercial property
• Property’s location within airport influence area
• Water Conserving Fixtures Disclosure
• FIRPTA and California Tax Withholding
• Building energy use and consumption information.
A real estate broker/agent is negligent if he/she fails to use the skill and care that a reasonably careful [prudent] broker/agent would have used in similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the standard of care.”

You must determine the level of skill and care that a reasonably careful broker/agent would use in similar circumstances based only on the testimony of the expert witnesses.
Fiduciary Duty
Jury Instruction 4100

A real estate agent/broker owes what is known as a fiduciary duty to his/her/its client. A fiduciary duty imposes on an agent broker a duty to act with the utmost good faith in the best interests of his/her/its client.
Fiduciary Duty
Jury Instruction 4101

The plaintiff claims that he/she/it was harmed by the broker/agent’s breach of the fiduciary duty to use reasonable care. To establish this claim, the plaintiff must prove all of the following ….

• That the broker/agent failed to act as a reasonably careful agent/broker would have acted under the same or similar circumstances
RISK MANAGEMENT

Fiduciary Duty

• **Duty of loyalty and good faith** (Burch v. Argus Properties, Inc. (1979) 92 Cal.App.3d 128, 131)

• **Duty to be honest and truthful** (Ward v. Taggart (1959) 51 Cal.2d 736, 741)

• **Duty to disclose all material facts** that might affect the principal’s decision (Roberts v. Lomanto (2003) 112 Cal.App.4th 1553, 1567)
Fiduciary Duty

• Duty to disclose relationship with other party (Smith v. Zak (1971) 20 CA3d 785, 794–795)


• Same obligation owed by trustees to their beneficiaries (Warren v. Merrill (2006) 143 Cal.App.4th 96, 109-111)
A real estate broker for the seller of property must disclose to the buyer all facts known to the broker regarding the property or relating to the transaction that materially affect the value or desirability of the property. A broker must disclose these facts if he or she knows or should know that the buyer is not aware of them and cannot reasonably be expected to discover them through diligent attention and observation. The broker does not, however, have to disclose facts that the buyer already knows or could have learned with diligent attention and observation.
Duty of Disclosure by Real Estate Broker to Client
Jury Instruction 4107

As a fiduciary, a real estate broker must disclose to his or her client all material information that the broker knows or could reasonably obtain regarding the property or relating to the transaction.
The facts that a broker must learn, and the advice and counsel required of the broker, depend on the facts of the transaction, the knowledge and experience of the client, the questions asked by the client, the nature of the property, and the terms of sale. The broker must place himself or herself in the position of the client and consider the type of information required for the client to make a well-informed decision.
Duty of Disclosure by Real Estate Broker to Client
Jury Instruction 4107

A real estate broker cannot accept information received from another person, such as the seller, as being true, and transmit it to his or her client without either verifying the information or disclosing to the client that the information has not been verified.
Duty of Disclosure by Real Estate Broker to Client

Jury Instruction 4110

A real estate agent or appraiser has a duty to a buyer of real estate to post only accurate information on a multiple listing service (MLS). The buyer has a right of action against an agent or appraiser for harm caused by inaccurate information on an MLS if the agent or broker knew or should have known that the information was false or inaccurate. (Civ. Code, § 1088; see Furla v. Jon Douglas Co. (1998) 65 Cal.App.4th 1069, 1077 [76 Cal.Rptr.2d 911].)
Does a Broker/Agent Have a Duty to INSPECT the Property?


- Sale of a 25 acre lemon and avocado grove – some in poor condition
- Property also included a residence
- Root rot existed but unknown to the agents
- Seller told agent Rickard there was no root rot
- Agent represented both buyer Smith and the seller
- Hundreds of trees died after closing
- Sued for Negligence and Breach of Fiduciary Duty
Lessons from *Smith v. Rickard*

**CC 2079:** The agent is under a duty to a buyer to conduct a reasonably competent and diligent inspection of the property and to disclose to a buyer all facts that materially affect the value or desirability of the property that such an investigation would reveal.

**BUT....** The duty to inspect only applies to SFR 1-4 and does not apply to commercial property.
Cautions from *Smith v. Rickard*

• The agent would likely be responsible to inspect the residence under CC 2079

• Notwithstanding CC 2079, an agent must exercise reasonable skill and care for the benefit of the principal in the performance of agency duties, and will be liable for the agent's negligence and possibly breach of fiduciary duty.

• Those duties may include inspecting the property and disclosing any material defects to the principal – it’s circumstantial.
"Though one may be under no duty to speak as to a matter, if he undertakes to do so, either voluntarily or in response to inquiries, he is bound not only to state truly what he tells but also not to suppress or conceal any facts within his knowledge which materially qualify those stated. If he speaks at all he must make a full and fair disclosure. . . ." (Sullivan v. Helbing, 66 Cal.App. 478, 483)
NEW LEGISLATION

- AB 802 Energy Disclosure
- SB 745 Water Conserving Plumbing Fixture Replacement
- SB 1194 Lodging Disclosure of Personal Information
- Split-Roll Tax
- AB 1919 Price Gouging
- AB 2847 Commercial Property Abandonment
- AB 2173 Commercial Property – Disposal of Tenant’s Personal Property
- SB 1343 Sexual Harassment Prevention Training and Education
NEW LEGISLATION

• AB 2219 Third Party Payments
• AB 2343 Calculations of 3-Day Notices and Summons (eff. 9-1-19)
• SB 721 Balcony Inspections
• Proposition 65
• AB 2164 Violation of local codes resulting from illegal marijuana cultivation – safe harbor for landlords from fines
• SB 224 Civil Liability for Sexual Harassment – extends beyond employment relationships to 3rd parties like prospective clients
REAL ESTATE LAW
PURCHASE & SALE FOR RESIDENTIAL AND COMMERCIAL TRANSACTIONS
CONTRACT DISPUTES
LAND USE
LEASES/ ESCROWS
ZONING/ EASEMENTS
FORECLOSURE AND SHORT PAY
UNLAWFUL DETAINER
BROKER SUPERVISION

EMPLOYMENT LAW
EMPLOYMENT MANUALS
MANAGEMENT ISSUES
EMPLOYMENT CONTRACTS
LABOR BOARD PROCEEDINGS
UNEMPLOYMENT CLAIMS
HIRING/ FIRING/ DISCIPLINE
INVESTIGATIONS, DISCRIMINATION TERMINATION

TRAINING / EDUCATION
BROKER SUPERVISION
CONTRACT FORMATION (RPA AND OTHERS)
PROPERTY MANAGEMENT
RISK MANAGEMENT

BUSINESS LAW
CORPORATIONS, PARTNERSHIPS,
LIMITED LIABILITY COMPANIES
PLANNING/FORMATION/OPERATION
PURCHASE & SALE TRANSACTIONS
CONTRACTS

MEDIATION/ ARBITRATION/
LITIGATION
TRIALS/ APPEALS
EXPERT TESTIMONY/ CONSULTATION
ASSET PROTECTION & ESTATE PLANNING

ESTATE PLANNING
CHURCHES & NON-PROFIT ORGANIZATIONS
FAMILY LAW
BANKRUPTCY
IMMIGRATION
ADVOCATES FOR FAITH & FREEDOM
TRADEMARK

Riverside County Office
25026 Las Brisas Road
Murrieta, California 92562
(951) 600-2733

Orange County Office
1601 E. Orangewood Avenue, Suite 175
Anaheim, California
(714) 978-2060

www.tylerbursch.com