

Staying Productive by Staying Out of Trouble **(Simple Risk Prevention for Real Estate Agents)**

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Introduction

Any real estate professional who has been involved in litigation or a licensing matter knows that it destroys business productivity. There is the financial stress, the massive time commitments and the dramatic impact on self-confidence. Compounding this is the fact that real estate agents are attractive targets for plaintiffs, as they may have or be perceived to have financial resources to tap and/or liability insurance. Much like the common cold, the best cure for these issues is to avoid them.

The Impact of Disputes

I. Financial

- 52% of all lawsuits filed targeted small business
- Small business paid out almost \$20 million in costs associated with litigation.
- To recoup litigation expenditures small businesses typically cut operating expenditures.

II. Productivity

- The length of time an average civil litigation case will take in the courts ranges from 9-24 months.
- Creates reluctance to take on risks and become overly cautious.
- Court actions take agents and employees away from doing their jobs or growing their business.

III. Emotional

- Legal disputes can cause anxiety and depression.
- Can make agents and brokers wary of employees and customers.
- Can change the tone and culture of the brokerage.

Five Practices to Protect Yourself

I. Get Smart.

"Life is tough...but it's tougher when you're stupid." (John Wayne)



A. You need to make continuing education a part of your everyday practice.

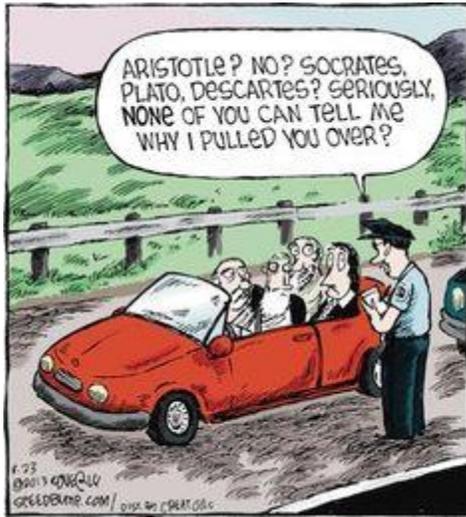
1. Read - Keep current by making reading a part of your practice.
2. Listen – Listen to other agents.
3. Learn – Attend continuing education sessions with the mindset to learn.

B. Be willing to change past practices.

C. Implement best practices.

II. Document.

*"It's not what you know. It's what you can prove."
(from the movie "Law Abiding Citizen")*



- A. Confirm and Save. The greatest protection is documentation, as it confirms what you said occurred.
- B. Do Not Purge. When you destroy materials in a file, you are negatively impacting your defense.

III. I am a real estate agent.

"I am not a doctor, but I play one on T.V." (TV Commercial, 1986)



- A. Do not venture outside your sphere of knowledge
- B. Learn to say, "I do not know."
- C. Direct clients to people in the know.

IV. **To disclose, or not to disclose – that is the question.**

"You're on a need to know basis and you don't need to know." (from the movie "The Rock")

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"Whoa—way too much information!"

- A. What are my (and my client's) disclosure obligations?
- B. Is this information confidential?
- C. What should I say to my client about disclosure?

V. Complicated schemes are typically bad.

"The shortest distance between two points is a straight line." (Archimedes)



- A. Know the difference between innovative and incompetent.
- B. Evaluate the source.
- C. Who benefits?

Conclusion: Questions?



David McGee, is partner/shareholder at Chestnut Cambronne, with over 25 years of litigation experience representing professionals, employers, boards (profit and non-profit), realtors (real estate agents, brokers, and brokerages), appraisers, title companies, engineers, design professionals, community associations, business and individuals in the areas of Professional Liability, Commercial Litigation, Insurance Litigation, and Real Estate Litigation Dave has repeatedly been named a “Super Lawyer” by Minnesota Law & Politics and Mpls/St. Paul Magazine. Dave has represented clients in numerous published appellate cases. Dave has represented clients in a variety of forums including arbitrations, mediations, court actions, trials, administrative proceedings and appeals. Dave also represents professionals before licensing and regulatory boards. Dave is a sought-after, frequent lecturer at a variety of forums, including the Minnesota Real Estate Institute, the premier continuing education course for Minnesota Real Estate Attorneys, and has written numerous articles in the area of Professional Liability, Construction Defect, Community Associations, Real Estate and Workplace Issues. He is also a qualified neutral under Rule 114 of the Minnesota General Rules of Practice (mediation and arbitration).

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