

This Year's Real Estate Commission Update Class Contains Several Surprises

All Colorado real estate licensees are required to take a 4-hour annual update class, and, although the deadline for doing so is the end of the year, Golden Real Estate's brokers always take it as early in the year as possible. All 10 of us took the class on January 29th, and came away surprised at some of its content.

What surprised us first of all was what the class said about **disclosing "affiliated business arrangements" and recommending service providers.**

Many larger brokerages, such as Coldwell Banker and RE/MAX, have an ownership stake in mortgage companies and other related businesses, including title companies, inspection companies, and insurance companies. If the ownership stake is 1% or greater, that constitutes an "affiliated business arrangement," and every client of those brokerages must be presented with a disclosure outlining those affiliations and the fact that the brokerages may profit when buyers or sellers engage any of those affiliated businesses.

Before I created Golden Real Estate in 2007, I was a broker associate at two firms with affiliated businesses, and I dutifully provided the disclosure of affiliated businesses to my clients, but I found it ethically questionable that agents were encouraged to "capture" clients for these affiliated businesses. I became more concerned as it became clear to agents that those with the highest "capture rates" were rewarded with relocation and other referrals from our managing broker.

For years I've known that the seller, not their listing agent, should select the title company and that we should offer a list of no fewer than three title companies from which the seller may choose. I don't have a problem with that. In this year's update class, I learned that the list must be in alphabetical order. Okay, I can handle that, too.

What surprised me was learning that if a brokerage has an affiliated title company, an agent needs only to disclose the affiliation using the state-approved disclosure form, but he/she does not have to provide the names of alternative title companies. Wow! That pretty much guarantees that each agent's buyers and sellers will use the affiliated title company and inspection company (since buyers and sellers are generally unfamiliar with such companies). And buyers who are renters, not homeowners, are likely to accept their agent's recommendation of his brokerage's mortgage company and insurance company because they don't have an existing relationship with providers of those products/services.

This shocked me because it's so counter-intuitive: a small brokerage with no affiliated businesses (and therefore no opportunity to benefit from such an arrangement) is required to provide clients with the names of three vendors of each and every product or service that might be needed during the course of a transaction. A brokerage with affiliated businesses, on the other hand (and which stands to benefit from the recommendation) is **not** required to provide the names of alternative vendors.

A year ago, the Denver Post published the results of an investigation of 2,200 transactions showing that three-quarters of those big brokerages captured 90% or more of the title work for their affiliated title company.

Another surprise for me was the expanded definition of "settlement service providers." I had been under the impression that the term "settlement service providers" referred only to title companies, mortgage companies and other providers of services related to settlement, i.e. closing. In the update class, we were told that this term also applies to the following:

- ▶ Attorneys ▶ Inspectors ▶ Surveyors
- ▶ Contractors ▶ Home Warranty companies

Brokers must now provide an alphabetical list of three providers in all of these categories. I am not allowed to share my own experience, gained from 15 years of observing the competence and professionalism of service providers in any of these categories. But if Golden Real Estate had a 1% ownership interest in any of these categories, I could recommend just that one vendor, providing only that I disclosed that ownership interest. It doesn't seem right to me.

According to the Real Estate Commission, this rule is designed "to provide transparency, accountability,

and consumer protection through disclosure" and "to ensure consumers do not pay disproportionately high settlement costs." These new rules, as defined by the Real Estate Commission, appear to stifle competition which tends to increase costs to the consumer. Maybe they should revisit these rules.

Perhaps the most shocking item in this year's update class concerned the Foreign Investment in Real Property Tax Act (FIRPTA). If you purchase real estate from a foreign national without a Green Card, you, the buyer, are required to withhold 15% of the purchase price at closing and to forward that money to the IRS within 20 days of closing. (Good luck with that!) You read that correctly. If you're the buyer, it is **your** responsibility, and if you fail to do so, the IRS can come after **you** for the tax not withheld, plus interest and penalties! The buyer's agent may also be held responsible but only up to the amount of any commission earned on the transaction. You're only off the hook by getting a signed affidavit from the seller affirming that he/she is not a foreign national living abroad.

And, as if putting the burden on the home buyer isn't enough, this federal law states that the withholding is **15% of the entire purchase price**, even though the seller will be responsible in the end for paying tax only on his/her capital gain. (It's helpful to know that this requirement of the buyer to withhold the tax does not apply if the purchase price is \$300,000 or less.)

In conclusion, I urge other real estate licensees to take the update class early in the year instead of waiting, as so many do, until November or December. Meanwhile, I hope this column is helpful to them, not just to consumers.

By the way, Golden Real Estate has a smartphone app listing 100 service providers in 50 categories. You can download it at www.clientlink.com/install/243.

2 Golden Real Estate Agents Are Qualified Staging Experts

David Dlugasch recently obtained certification and designation as a Home Staging Expert® from Center Stage Home, Inc. The course included all aspects of staging a home to sell, from utilizing the homeowners furnishings to furnishing a vacant listing and alternatives that fall in between. This is a huge added value that David brings to Golden Real Estate. He has already provided staging advice to several of our clients.



Susan Dixon is an American Lighting Association-certified designer and has staged homes professionally for 10 years. She studied art and architecture in Europe and received her Bachelor of Arts in Design at Brigham Young University where her emphasis was in Interior Design. As a Realtor and as a designer, Susan is an expert in home décor and has a passion to serve her clients in both capacities.



REAL ESTATE TODAY



By **JIM SMITH**, Realtor®

'8 Weeks to Wellness' Event Tonight

I have written in the past about this program which helped Rita and me return to healthy body weights and greater fitness. We feel 20 years' younger now! Come to an informational session at **6:30 pm** tonight, Thursday, at **Body in Balance Wellness Center**, 755 Heritage Road, in Golden. Call **303-215-0390** for info.



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