



3 Reasons Why a Real Estate Boom Can Put Your Brokerage at Risk, Berxi Newsletter, author Jeanne Grove Esq., October 17, 2021

It shouldn't be news to anyone in the real estate business that the market is red hot right now. However, with this boom in sales comes potential risks to both buyer and seller agents. While avoiding legal action altogether may be an unrealistic goal, being aware of these top three risks will help to limit your potential exposure.

Risk #1: Over-Asking Offers

In the current real estate boom, properties are routinely selling for well over the listing price. Buyers often find themselves in a competitive bidding situation where the highest number wins. The result can be a potentially inflated number that is not in line with appraisal values.

With a limited housing supply, a buyer's agent may advise her client to increase their offer to win the property against other potential buyers. But does that mean the buyer's agent is advising on market value of the property? No. A buyer's agent needs to explain clearly to her client that the agent is advising only on a strategy for a winning offer (e.g. increasing the offer price), but that the agent is not and cannot opine on the market value of the property.

Risk #2: Waiving All Contingencies

In a competitive bidding scenario, buyers routinely waive all contingencies upfront as part of a purchase offer to make it more attractive to the seller. Sellers are more inclined to accept an offer with no contingencies because it is essentially a done deal once the offer is accepted. By contrast, an offer with multiple contingencies would allow the buyer to legally walk away from the deal before the close of escrow for a number of reasons. In this seller's market, no seller wants that much uncertainty surrounding the transaction.

There are a multitude of risks associated with an upfront waiver of all contingencies...

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