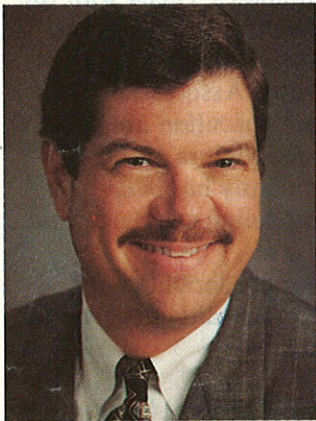


I've got a secret—do I tell?

Deciding when a duty of confidentiality begins



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You're on a listing call at 1234 Sunrise. The owner becomes very serious and tells you she is in financial difficulty and must sell quickly because her lender is about to begin foreclosure proceedings. You learn the next day that she has listed with a competitor.

Two weeks later, you show the Sunrise property to a buyer-client, and your buyer wants to make an offer. Can you, should you, or must you disclose to your buyer-client the information about the seller's motivation to sell?

The Code of Ethics is silent on the matter. A few years ago, the Professional Standards Committee considered whether to impose an obligation of confidentiality before the agency relationship had been established but declined to do so.

State law, however, may have something to say. If your state has defined when confidentiality begins, look there. But many states have not.

So what do you do? There are differing opinions about the right way to handle this situation. Some say there's no confidentiality until the listing agreement is signed. Others say that confidentiality exists because the information was gained in the course of pursuing an agency relationship (or, in some states, pursuing a nonagency relationship that requires confidentiality).

A middle course might say that the practitioner should give the seller a

"Miranda warning" during the listing call, telling the seller there's no confidentiality until a listing agreement is signed.

I believe the consumer should be protected. The situation is parallel to that of a client seeking the services of an attorney, in which the attorney usually has a duty to keep confidential the information obtained in the course of determining the attorney's employment.

In my opinion, either the seller should

Should you read potential sellers their "Miranda rights" before they blurt out a confidentiality?

be told the information won't be held confidential or the practitioner should keep the information confidential. I don't think it's right to let the seller's information be fair game unless it's clear the seller knows that.

What about the buyer-client? If you take the Miranda position and have the information, you should give it to the buyer. But if you take the position that the information should remain confidential, you should probably tell your buyer that you're limited in what you can say regarding the property. Granted, this isn't an easy position to be in.

This is another area in which the real estate professional can make a mark above the norm. Think about it, REALTORS®, and decide how you should protect the public. **RM**

Timing Info...