



Agent's Duty to Review Closing Statement for Accuracy and Notify Parties of Errors

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QUESTION: I represented a seller and sold their home, which closed two weeks ago. The buyer's agent contacted me today regarding a mistake just now found in the closing statement. The buyer's agent requested that I contact my seller and inform them that money was needed to correct the disbursements made at closing because the seller had agreed to make an additional concession in lieu of repairs that was left off of the closing statement. I reviewed the closing statement carefully and didn't notice the error, but what responsibilities do I have to ensure accuracy? Additionally, what liability does my seller have to pay the money now demanded?

ANSWER: [Section 93A-6\(a\)\(14\)](#) of the Real Estate License Law states that a broker may be subject to discipline for "failing, at the time a sales transaction is consummated, to deliver to the broker's client a detailed and accurate closing statement." The statute further states that if a closing statement is prepared by an attorney, a broker may rely on the delivery of that statement. However, the broker "must review (that) statement for accuracy and notify all parties to the closing of any errors."

If you recognize an error following your mandatory review of the closing statement, you have a duty to notify all parties, even if the error is in your client's favor. Keep in mind that correcting any error, even when it may initially appear to be a favorable mistake, is most beneficial to your client because it prevents the scenario you describe where your client may later face demands to make an unexpected reimbursement. If you carefully review the closing statement, but do not recognize any mistakes based upon the information in your possession, it's unlikely that you have violated any duties imposed upon you as a broker.

Whether your seller will have to make the payment demanded is less clear. The merger doctrine protects land transfers by declaring that a buyer's acceptance of a deed is the sole binding agreement of the parties to the transaction. Promises made prior to and outside of the terms of the deed are extinguished by acceptance of the deed. There are exceptions to the common law doctrine of merger, however, such as mutual mistake, misrepresentation, or other promises intended to survive closing.

When you inform your seller of the agent's demand, you should recommend that your client seek legal advice regarding whether they are legally obligated to return any portion of the funds received at closing.

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