



Death, Defects and Disclosure

Understanding the Who, What, Where and Why of Disclosure


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UNDERSTANDING THE GENERAL RULES OF DISCLOSURE

Hypothetical #1: The Elevator Case


A property listed in 2011 contains a residential elevator which was the subject of an accident causing death in 2002.






Hypothetical #1: The Elevator Case

- Do you need to disclose?
- What if elevator was fixed prior to listing and not defective?
- Do you need to disclose the death that occurred in 2002?
- What due diligence, if any, does the agent need to do regarding the circumstances of the accident?




Hypothetical #1: The Elevator Case

Then




Now






Hypothetical #1: The Elevator Case

- Types of Agency and Duties of Disclosure Owed
 - Seller's Agency
 - Buyer's Agency
 - Dual Agency
 - Transactional Agency
- Why not Research and Disclose Everything?




Hypothetical #2: The Watcher Case

After listing of property but before sale, seller receives threatening letter advising that someone is watching the house and has been watching the house for years.




- Do you need to disclose?




Hypothetical #2: The Watcher Case

- The Consumer Fraud and Protection Laws and the Genesis of the Seller's Disclosure Seller's Agency
 - The Broker/Agent Standard and Duty to Visually Inspect
 - Knowledge and Due Diligence
 - What is a "Material Defect?"
 - What Does "Materially Affect the Value" Mean?




Hypothetical #3: The Amity Horror

Agent learns that listed property was the subject of multiple murders years ago.



- Do you need to disclose?
- What if owners claim they hear ghosts or strange things occur in the house? Do you need to disclose?

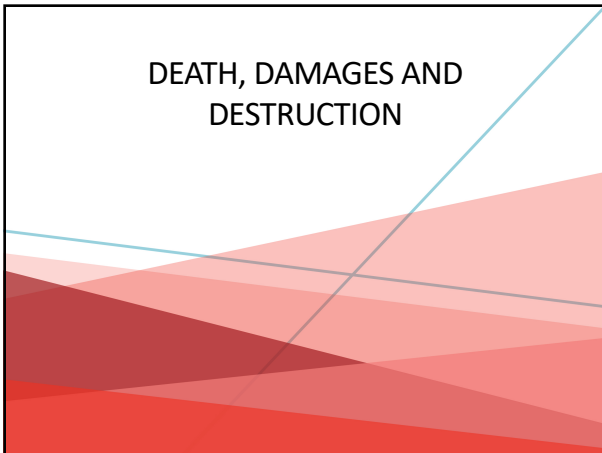



Hypothetical #3: The Amity Horror

➤ Distinguishing Between Physical and Non-Physical Defects or Conditions

- What are “Physical Conditions?”
- What are “Social Conditions?”
- What are “Psychological Conditions?”
- What are “Off-Site Conditions?”
- What Constitutes a “Reasonable Inquiry?”


DEATH, DAMAGES AND
DESTRUCTION





Hypothetical #4: Magic Johnson’s House

Agent is asked to list the home of Magic Johnson, former Los Angeles Laker and Hall of Fame basketball player who is HIV positive.



Hypothetical #4: Magic Johnson's House

- Do you need to disclose Magic Johnson is the owner?
- Do you need to disclose Magic Johnson is HIV positive?
- What if owner is not famous and has HIV or some other illness? Do you need to disclose?

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Hypothetical #5: The Gettysburg Property

Agent has been asked to list a property located in Gettysburg, PA – near the battleground of one of the most bloody and costly battles of the Civil War. It turns out that on the very property, both a Union and Confederate soldier died in battle.



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Hypothetical #5: The Gettysburg Property

- Do you need to disclose these deaths?
- What due diligence, if any, does the agent need to do regarding the tragic history of the property as the site of these deaths?
- What if the soldiers died in the field across the street from the property instead of the property itself?
- What if the deaths occurred last year as a result of a domestic dispute instead of a battle? Do you need to disclose?

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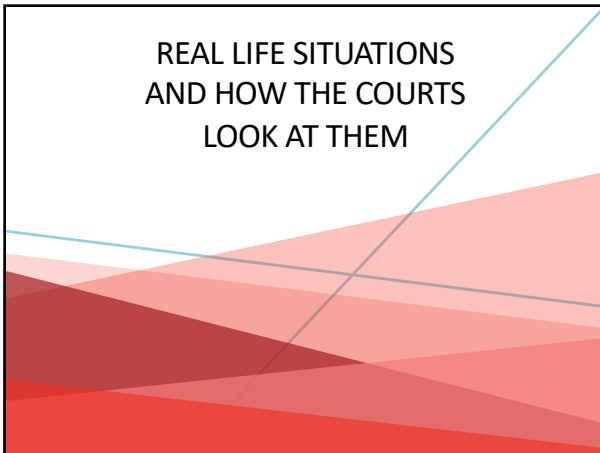
Hypothetical #5: The Gettysburg Property

- Recognizing Objective v. Subjective Conditions
 - Death
 - Disease
 - Religious or Moral Issues
 - Prejudice
- Stigma Damages – Trash or Treasure?





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**REAL LIFE SITUATIONS
AND HOW THE COURTS
LOOK AT THEM**

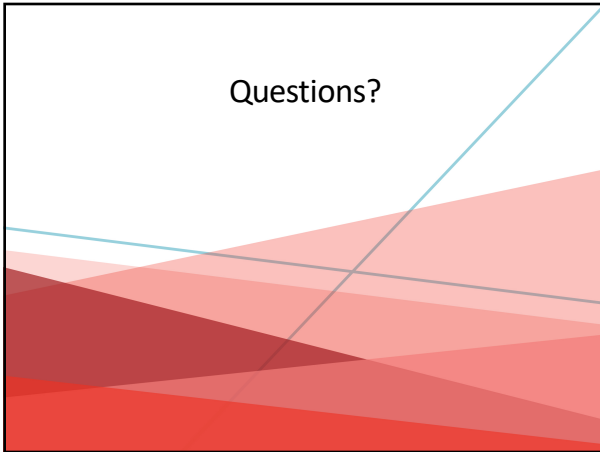


- Off-Site Conditions
- The Noisy or Obnoxious Neighbor – Social Conditions
- Death, Disease and the Supernatural
- Past Conditions that have been Repaired or Replaced





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Marc Singer is a Real Estate attorney who concentrates his practice in real estate litigation, professional liability counseling and litigation and business litigation. He has handled numerous matters in both the state and federal trial and appellate courts, as well as before arbitrators and mediators. Marc has successfully represented and counseled lawyers, accountants, real estate brokers and other professionals in large exposure malpractice actions involving complex liability, damages and apportionment issues. He successfully defended a large regional accounting firm and its employees against multi-million dollar claims of fraud and negligence arising out of their involvement in several real estate ventures.

Marc also has extensive experience in representing real estate brokers, agencies and title insurers in professional liability claims arising out of residential and commercial brokerage and sale agreements. He has been involved with the real estate brokerage industry since the 1980's and has handled claims arising out of allegations of fraud, breach of fiduciary duty, negligence, breach of contract and failure to disclose.

Additionally, Marc has represented foreign quasi-governmental instrumentalities, finance companies and domestic partnerships involved in multi-million dollar contract disputes. He also has been involved in the prosecution of fraud and related misappropriation claims on behalf of a premium finance company concerning one of the largest insurance fraud scams in U.S. history.

Marc has significant experience in alternative dispute resolution and has been qualified by the State of New Jersey as a Rule 1:40 statewide mediator. He has written and spoken on a variety of litigation issues including civil motion practice and commercial landlord-tenant disputes. Marc previously was active in the listing and sale of residential real estate having received his New Jersey Real Estate Broker's License in 1988 and currently litigates and lectures on numerous issues affecting the real estate brokerage industry.



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Richard J. Angowski, Jr. concentrates his practice in the areas of complex commercial litigation, real estate litigation, commercial real estate transactions, and land use. He has a proven track record representing private clients and public entities in federal and state courts and in business transactions. Rich graduated from Georgetown University in 1995 with a B.A. in Government/International Affairs. After teaching history to high school students, he then attended Seton Hall University School of Law, graduating with a J.D. in 2004. After serving as a Judicial Law Clerk in Ocean County in 2004-2005, Rich entered private practice. He is admitted in New Jersey (2005) and New York (2006), as well as the District Court of New Jersey and the Southern District of New York. In 2014, the New Jersey Law Journal recognized Rich as one of the "New Leaders of the Bar," formerly known as the "40 Under 40" list. In addition, New Jersey Monthly Super Lawyers named Rich a "Rising Star" for the years 2014-2017.

On a daily basis, provides services to businesses and individuals, including real estate developers and technology companies. In the land use arena, Rich has successfully brought applications on behalf of individual and business clients for projects ranging from residential construction to large scale commercial redevelopment.
