

DIRT LAW AT GROUND LEVEL



EVEN DOGS CAN'T PLAY WITHOUT A LICENSE!!

By W. Christopher Barrier

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Forty years ago, when lawyer specialization was the exception rather than the rule, I occasionally found myself in the courtroom of the late Arnold Adams, usually as an observer for a creditor client.

Just as often, “Judge” Adams (in fact a referee in bankruptcy who hated the implication he was anything other) would seize a hapless creditor (verbally) by the scruff of its corporate neck and demand to know if their representative was a lawyer. They almost always were not. Unless they were individuals pursuing their own debts, Judge Adams would send them home for practicing law without a license, after explaining the difference between “representing” a creditor as an employee, and doing so as a lawyer.

APPEARANCES MATTER...

It was not an idle exercise and bears directly on today’s topic. If a fellow were to appear in any legal proceeding on behalf of someone else, were he to draft legal documents or to give legal advice to a third party, he would be in trouble. The client is paying for these efforts

because of a lawyer's skill and training and, further, because the lawyer is subject to the supervision and discipline of the court system, both for the client's protection.

WISE BEYOND HIS YEARS...

For a clear, thorough discussion of the entire topic, start at page 30 of the Spring 2013 Arkansas Lawyer, which begins an excellent article by lawyer-to-be J. Chad Owens.

For a focus of greater interest to real estate people, especially the completion of forms, keep reading through age 32. Finishing this article is optional, as always.

Slightly over 40 years ago, the Arkansas Supreme Court set out six instances in which a real estate broker could fill in the blanks in forms (usually the contract):

1. The party must make an informed decision to have the work done by the broker and not a lawyer. The critical point here is the duty of the broker to ask the question.
2. Even then, the document or form needs a review by a lawyer, before or after the blanks are filled. The obvious reason for this is to make sure the parties have filled in all of the blanks correctly and avoided inconsistencies.
3. and 4. They need to be everyday forms which the broker will know by heart, but without inserts that contain provisions touching on the legal issues, such as warranties as to availability of tax credits or tax-exempt financing.
5. The broker gets no extra pay for completing the forms since she has already contracted for a specific commission.
6. Again, there are some blanks that amount to yes or no questions, or the checking of a box. Elaborate provisions regarding liquidated damages, non-recourse for failure to close, etc. should be left to a lawyer.

But, real estate brokers are trained and licensed too, and have more experience completing the forms that almost any lawyer. In fact, even after 40 years of cases, there may be cases we all can agree are clear, such as a simple condition for extending a deadline. And others that are not so clear or obvious, such as when a written offer may be accepted by email. (Hint: don't guess.)

Most seasoned realtors develop a sixth sense as to what is permissible and what is not. What to do if you're still uncertain? Call Chad!!

CHRIS BARRIER has practiced law with a license for nearly 46 years. And he has had all of his shots.