

Residential Property Listing Agents: Why a Walkthrough Isn't Optional — It's Your First Line of Defense Under the New Jersey Consumer Fraud Act

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When you take on a new residential listing in New Jersey as a real estate agent or broker, you're not just looking to sell the property to the highest bidder, you are now a part of a statutory and regulatory system designed to protect members of the public from undisclosed risks. Under New Jersey's Consumer Fraud Act ("CFA"), real estate licensees may be exposed to potential treble damages and attorney's fees liability for misrepresentations or omissions in connection with the sale of real estate if they fail to abide by the regulatory and statutory guidelines that govern real estate professionals.

To protect yourself, make sure that you are acting in a way that will allow you to fit into the "safe harbor" exemption that is a part of the CFA. The exemption shields brokers and salespersons from liability for conveying information provided by the seller, but only if you (1) had no actual knowledge of the falsity of the information, and (2) made a "reasonable and diligent inquiry" before disclosing the information to a potential buyer.

One of the core steps of that reasonable inquiry is physically walking around the property before it is listed and determining whether you observe any issues that may need to be investigated or discussed with the seller prior to listing. The CFA requires that, *prior* to relaying any information to a buyer about the physical condition of a property, the agent must (a) inform the buyer that the seller is the source of the information set forth in the Seller Disclosure Statement, and (b) have visually reviewed the property with a reasonable level of diligence to check for physical conditions that would cause a prudent person to want to investigate to see if there is an issue that either needs to be addressed or disclosed to a potential buyer.

Here's what that means in practical, real-world terms:

- You're not a licensed home inspector, electrician, plumber, carpenter, structural engineer, or mold specialist. You are not being asked to conduct any in-depth technical reviews of the property or to test items like HVAC systems or hot water heaters.
- You are required to do a basic walk-through: look at visible roofs, windows, plumbing fixtures, HVAC equipment, foundation walls, ceilings, look for signs of water intrusion, peeling paint, obvious structural distress, leaks, sagging floors, etc.
- If you come across any physical condition that reasonably suggests something may be wrong, e.g. cracks in a foundation wall, water stains, uneven floors, broken windows, sagging joists, or visible mold patches, you cannot ignore it. You must flag it, raise follow-up questions with the seller, and ensure that any issues are accurately disclosed in the Seller's Disclosure Statement.
- In short: you should not passively rely on the seller's representations if they conflict with what you see.

Since August 2024, by enactment of the Real Estate Consumer Protection Enhancement Act, all sellers must provide a completed Seller's Disclosure Statement prior to closing. That makes a real estate agent or broker's walkthrough of the property even more critical. It's the bridge between what the seller has filled out and what you're comfortable passing along to a buyer without incurring potential liability.

If you fail to walk the property meaningfully, or you ignore red flags you have seen, you risk falling outside the safe harbor provision of the CFA. At that point, a buyer can argue that you failed in your duty to conduct a reasonable review of the property or to verify that the Seller's Disclosure Statement is consistent with your own observations. In a worst-case scenario, that misstep could open you to a CFA claim for omissions or misleading statements.

Bottom line for listing agents and brokers:

- Never skip the walkthrough. It's your first line of defense to any claim that you failed to disclose information or that you violated the CFA.
- Keep your scope realistic (you're not a specialist) but flag anything that reasonably suggests a condition inconsistent with what the seller disclosed.
- Prompt the seller to clarify, repair, or disclose fully in the Seller Disclosure Statement.
- Always note (in writing) in your file that you performed the walk and any red flags you asked about.

Treat that walk-through as your own effort to protect yourself from future legal entanglements. If you do it conscientiously, you help protect both your client and yourself, and stay safely within the bounds of the CFA safe harbor.

If you have any questions about the above alert, please contact Michael Shortt of Saiber LLC's real estate litigation practice group.