

Whose Side are You on?



By **HAYDEN GROVES**
REIWA President
REIA Deputy President



Want more property info? Email me
hayden@dgre.com.au for your free REIWA Suburb Report

As an agent working in your community, acting in the best interests of your seller often puts you at odds with the buyer who, depending on their buying experience may call on you when it is time to sell in the future. There is, therefore, a natural tendency for agents to discharge their responsibilities in a more neutral, conciliatory way to the extent it can become unclear if the agent is working for the buyer or the seller.

buyers should take responsibility

Transacting in real estate has evolved and now demands greater transparency from sellers when offering property for sale. Some legal practitioners have commented that the entire concept of caveat emptor (buyer beware) has all but gone from the process. This is a concern because a buyer now has less responsibility to satisfy themselves about the property before they buy. Nowadays, many buyers are genuinely surprised that the seller has a responsibility limited to the contract when it comes to settlement; for example if the property was grubby when the buyer inspected it, then it should, in principle, be grubby at settlement.

This erosion of 'buyer beware' makes it more difficult for agents to be clear which side of the fence they sit. For example, should an agent prompt a buyer to include certain contractual provisions in a sales contract that protects a buyer's interest such as a building inspection clause, termite inspection and



the like? One argument is that it is not the agents' role to suggest the buyer includes any conditions at all as it is not in their seller's best interests. The law says that the agent must act in the best interests of their Principal (mostly the seller) and only "be fair" to the buyer.

Yet, some agents have pre-printed offer and acceptance contracts that suggest their sellers provide warranties outside their normal contractual obligations which dilutes a buyer's responsibility to inform themselves about a property. Usefully, such initiatives do clear up many a small argument before settlement as to who is responsible to fix the ceiling fan. If the buyer failed to check the fan prior to purchase and it was always faulty, well it is the buyer's problem. And this is what leads to buyer consternation because it is assumed the fan functioned perfectly. Such "warranties" clauses make it the seller's job.

Sellers should spread their risk by thoroughly informing their agent about their property before hitting the market, buyers should take responsibility in finding out all they can about a property and agents need to remember who they work for.

These comments are the writer's own and do not necessarily reflect the current opinions and policies of the Real Estate Institute of Western Australia.