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REAL ESTATE PROFESSIONALS BEWARE

Dear Friends,

I am writing to inform you of an important legal decision which may have a dramatic impact on how you are serving your real estate clients. As some of you may know, a panel of judges from the Massachusetts Appeals Court released a decision in the case of Ford v. Carey. The case was brought by a buyer and seller (the "Plaintiffs") against a real estate company and its broker. The Plaintiffs alleged that the broker misrepresented to the seller that he had a noncontingent offer from a buyer which induced the seller to list the property with the broker. The Plaintiffs also alleged that the broker failed to disclose to the buyer that he was representing both the seller and buyer in the transaction. Ultimately, the transaction was completed and the broker earned a commission from the sale. The Plaintiffs subsequently sued the broker and his company for violations of the Massachusetts Consumer Protection Act (G.L. c. 93A).

At trial in the Superior Court, the judge found that the broker and his real estate company had indeed violated G.L. c. 93A and various real estate regulations. As a result, the judge awarded damages, attorney's fees and costs to the Plaintiffs. The broker and his company appealed the trial judge's decision. On appeal, the panel of appellate judges agreed that the broker and his company violated G.L. c. 93A by misrepresenting the noncontingent offer to the seller and by failing to disclose the broker's dual agency to the buyer. The Appeals Court did overturn the award of damages and attorney's fees to the buyer because they did not find that the buyer actually incurred any loss from the violations. However, the Appeals Court upheld the award of damages to the seller, as well as the award of attorney's fees and costs in the amount of **\$75,000.00**.

This case should serve as a reminder to all of us in the real estate business that what we say to potential clients and how we disclose certain information is vital and has significant legal implications. Making misrepresentations is certainly a violation of real estate regulations, but as the Ford v. Carey case demonstrates, these misrepresentations are also a violation of the Massachusetts Consumer Protection Act. Violations of this

law may result in an award of damages, treble damages, attorney's fees and costs. The attorney's fees and costs alone that were awarded to the seller in this case totaled \$75,000.00! That's a hefty price to pay for misrepresenting information to a potential client.

Additionally, this case reinforces the requirement of real estate professionals to have buyers and sellers sign the appropriate disclosure forms. The Court in Ford v. Carey ruled that the broker's failure to disclose his dual agency to the buyer was also a violation of the Consumer Protection Act. I recommend carrying a few of the common forms with you when meeting with clients or potential clients. Have them sign these forms as soon as possible to insure you abide by the law and industry regulations.

Protecting yourself, your livelihood, and your company does not have to be expensive or complicated. Simple measures go a long way in shielding you from legal liability. When in doubt, call your friendly real estate attorney for advice.

I hope this letter has been helpful to your ongoing real estate practice. Please feel free to pass this newsletter along to colleagues. Also, do not hesitate to contact me with any questions, concerns or comments you may have. I would be happy to assist you. I look forward to speaking with you soon.

Very truly yours,

A handwritten signature in black ink that reads "Michael B. Cabral". The signature is written in a cursive, flowing style.

Michael B. Cabral, Esq.

P.S. As an attorney with a focus on real estate transactions, development and litigation, I would welcome the opportunity to provide assistance to you and your clients. Please feel free to pass my name and contact information along to anyone who you feel may benefit from my services. I look forward to working with you and your clients to protect your interests throughout your business transactions.