



High Crimes and Reckless Disregard

Q&A ASK AN ATTORNEY

Q. *I'm a property manager with a month-to-month tenant that I believe has moved out without giving notice. The house appears to be vacant when I look in the windows. Can I just change the locks and find another tenant?*

A. No. You must follow the procedure set out in California Civil Code Section 1951.3 on how to deal with abandonment of leased real property. The landlord must personally serve or mail by first class a written "Belief of Abandonment" notice to the tenant at his or her last known address (or any other known tenant's address) if the rent has been due and unpaid for at least 14 consecutive days. Section 1951.3(d) provides a sample form. The real property is deemed abandoned (and the landlord may take possession of it) 15 days after the notice is served personally or 18 days after the notice is deposited in the mail.

For a complete listing of new laws, visit www.car.org/index.php?id=MzY1MZA=.

A recent case before the Second District California Court of Appeal, *Warren v. Merrill* (2006), should be a cautionary tale for real estate licensees on what not to do when representing clients. The buyer and plaintiff, John Warren, suffered from an assortment of medical and other related neurological disorders. He also was in the process of getting divorced and needed to buy a home for himself. At the open house for a condominium, Warren met real estate broker Hildegard Merrill, who also was the agent for the seller.

A Perfect Storm

Warren's credit rating was poor and his FICO score was very low. Merrill told Warren he would have to make at least a 20 percent down payment or he would have to pay a very high mortgage interest rate. Merrill also told Warren he needed a co-borrower with a good credit rating in order to secure a mortgage at a reasonable rate and suggested her own daughter. Merrill's daughter agreed to go on the title with Warren and to be the co-borrower on the mortgage, provided he pay her \$10,000 for her assistance. Once escrow closed, Merrill's daughter was to execute a quitclaim deed to Warren to remove her name from title in exchange for the \$10,000.

In addition, since Warren didn't have enough money to make the 20 percent down payment, Merrill offered to defer her commission of \$27,000 and to loan

this amount to help Warren.

Warren agreed to Merrill's plan. Although the parties discussed writing down their arrangement, they never did. According to Warren, he asked Merrill several times, both before and after escrow closed, to put their agreement to transfer title in writing. Merrill wrote up a purchase offer for the condominium indicating that her daughter and Warren were co-purchasers. Merrill never had Warren fill out a loan application, and Merrill never attempted to secure a loan with Warren as a co-borrower with her daughter. Instead, Merrill applied for and secured a loan in her daughter's name alone. In fact, Merrill's daughter could not qualify for a loan either and Merrill lied on the loan application so that her daughter would qualify for the loan.

Merrill knew the lender would not fund the loan request with different people indicated to take legal title than had applied for the loan, so Merrill also had Warren sign an amendment in escrow to remove his name from title, explaining the document was just a formality required to secure the loan and to close escrow. When escrow closed, Warren moved into the condo, but Merrill's daughter did not transfer title back to him. Warren became ill and checked into the Betty Ford Clinic. He wasn't able to make his homeowners' association payments or mortgage payments during this time. Merrill then filed an unlawful detainer action to have Warren removed from the unit.

While Warren was still in the Betty Ford Center receiving treatment, Merrill

secured a judgment against Warren, got a writ of possession, evicted him from the premises, and removed all his belongings. Furthermore, Merrill held a lien sale of Warren's personal property and was herself the successful bidder at the sale that included the personal papers of Warren's grandfather, the former California Governor and Chief Justice of the United States Supreme Court, Earl Warren. When he left the Betty Ford Center, Warren discovered he had been locked out of the condominium. In his last conversation with Merrill, Warren explained he was desperate and homeless. Merrill, who had rented out the condo, demanded that Warren stop calling her.

Fraud, Unequivocally

Warren sued Merrill and her daughter. The trial court found by clear and convincing evidence that Merrill had acted outrageously and with reckless disregard in perpetrating the fraud on Warren, sufficient to warrant an award of punitive damages. The court also ordered quiet title in Warren's favor.

Merrill appealed.

The appellate court, which concurred with the trial court's ruling, noted that there was substantial evidence of both constructive and actual fraud. A constructive fraud arises with a breach of duty in a fiduciary relationship that "misleads another to his prejudice." Actual fraud occurs when a person makes a promise without the intention of performing it. The court found an "egregious violation of the duties of loyalty and undivided interest by a fiduciary toward her principal, as well as a deliberate plan to defraud him out of his down payment and the property."

A final note: After being held liable for fraud, a licensee will most likely lose his or her real estate license. ♦

Sonia M. Younglove, Esq., is C.A.R. senior counsel.

How I Make...

\$327 Per Hour

Practicing Real Estate

I Went From Struggling Rookie To Top Producer – 5 Years Straight – Using Only ONE Assistant. And My Production Is Consistent As The Morning Sunrise – All By Using A Simple, 3-Step Marketing Tool I Discovered By Accident From A Source I Would Have Never Expected. Here's Why I'm Sharing My Discovery With You...

Dear Fellow REALTOR®.

Life wasn't always this good. Five years ago I was struggling to build a successful real estate practice. I barely survived on less than \$20,000 my first year – averaging \$6.84 an hour to be exact. I was exhausted and frustrated when the most remarkable thing happened.

During an unusual listing presentation, I met a person who showed me a simple marketing tool he was using successfully to generate clients in a completely different industry. Long story short, I applied the very same tool to my real estate practice and was stunned by a non-stop flow of clients.

I made over \$1.84 million in *net* commissions my first 4 years using this tool. I now make more than most doctors and lawyers, averaging over \$320 per hour practicing real estate – with no cold calling, no "selling", and none of the frustrations most agents face. Best of all, I have finally discovered the perfect balance between my career and family life.

I kept the tool to myself for 3 years while perfecting it into a simple 3-Step system. I know of no one



Laurie Kaye, REALTOR®

using it the way I do. It's amazingly easy to learn, inexpensive to use, and will work wonders for anyone – new agent or top producer; big city or small town.

Recently I decided to reveal the 3-Step tool to our REALTOR® community in order to build an exclusive agent network. But I'm limiting the number of agents using it, first come – first serve.

If you're serious about your success in real estate, I'll send you a Free 26 page booklet explaining the 3-Step system, including proof of my success and a 100% guarantee it can work for you. Just call my 24 hour Toll-Free voice message at **1-800-894-5839**, and leave your name and address at the tone.

Best wishes for your success,

Laurie Kaye

Laurie Kaye, REALTOR®

P.S. Visit our web site at www.3-Steps.com for a Free money-making real estate marketing newsletter.

©2002 FCI, Inc.

New Frame



1-800-THE-SIGN

Out the Door in 24!

4 x 4

BASIC SIGN
Standard PVC post kit \$75

\$68⁸⁸

www.1800thesign.com

1-800-843-7446

Next day delivery available