



The Reno/Sparks Association of REALTORS® has been monitoring a court decision involving a fellow REALTOR®, Amina Johns (AKA AJ Johnson). The decision of this case should not be taken lightly. The Board of Directors has determined that educating our members of this case is of utmost importance.

Nevada REALTORS® Counsel, Tiffany Banks, has written the following article highlighting key eliminates of the decision.

Included in the article is a link to the "[Findings of Fact and Conclusions of Law and Judgment](#)" so that you can also read the court findings.

If you have any questions feel free to contact the Reno/Sparks Association of REALTORS® at info@rsar.realtor or 775-823-8800.

Tiffany Banks, General Counsel

Disclose, Disclose, Disclose

REALTORS® are required to gain knowledge of properties and applicable issues concerning their properties or transactions that could later become harmful to clients, and all parties to a transaction. REALTORS® also have a duty to be fair to all parties in a transaction.

While it is true that REALTORS® can and should call on experts for specialized knowledge, given they are practicing in the field of real estate, REALTORS® are also required to have adequate skill and expertise in the areas they practice. If a transaction is beyond a REALTOR'S expertise, he or she should not work on it. No one should assume that ignorance can be a defense. As much as a buyer has the responsibility of due diligence, there is also certain level of due diligence that all REALTORS® must follow for their own sake and the sake of their clients.

Furthermore, under Nevada law, a licensee must disclose to all parties to a real estate transaction known material and relevant facts, data or information related to the property -- as well as facts that they should have known through the exercise of reasonable care and diligence. It is important to understand that each enforcing county and/or city may have their own specific requirements and codes, and a licensee must know the relevant state laws, zoning requirements and health regulations.

Recently, the Second Judicial District Court in Washoe County entered a Findings of Fact and Conclusions of Law and Judgment. It found against a real estate licensee on various issues. The sellers and the agent for the buyer settled prior to the case with the remaining issues presented and contested at a hearing. As an association, we feel it is imperative to make REALTORS® aware of this case as an educational piece and to highlight the duties of a REALTOR® and licensee. For many REALTORS®, this may



serve as a refresher and to others a wake-up call to make sure they are well informed as to the required knowledge when representing a client.

[The Case: \(Click here to read the full Findings of Fact and Conclusions of Law and Judgement\)](#)

The property was listed as “single-family residential” in MLS and contained three separate structures. There were various changes over the actual living space that occurred after the property was initially listed, including through buyers’ appraisal of the property. The buyers did inspections and due diligence on the property and the sellers answered several of their questions as well as filled out the SRPD. However, an issue still arose. The buyers, a year after COE, discovered that the ‘mother-in-law quarters’ had its sewer pipe connected to the main home’s sewer pipe -- which then poured into a 1000-gallon septic tank -- which was inadequate without a variance from the county health department.

During the escrow period, the sellers had stated that the tank was 15,000 gallons and served both houses. However, once serviced, and still during the due-diligence period, officials from the pump company stated they pumped the 1,000-gallon tank. This, however, wasn’t the main issue in the case. The Court determined that prior to close of escrow, all parties to the transaction were or should have been aware that the existing structures did not comply with the applicable zoning (single-family) and the actual living space.

The Court found that the problem with the septic system could not have been identified at the time of the sale or the COE since the problem was below the surface, and “although the defendants could not have known the fact of the pipe situation, ***that they SHOULD HAVE KNOWN that the zoning code infraction- two dwellings on a single family lot, including two living dwellings, would indicate that the tank capacity was too small- and should have at least raised a concern that should have been relayed to the plaintiffs.***”

It is important to focus on the court’s findings. Although the defendants could not have known the fact of the pipe situation, the Court finds that a real estate broker and/or agent should have known that the zoning-code infraction would indicate there MAY indeed be a problem, which should have triggered an alert to raise that issue. While the court did not focus on the forms used, or what the buyers acknowledged through various forms, it is important to remember that no form can override the duties of a real estate agent to disclose material facts relating to the property. No contract or inspection forms can absolve a real estate agent from his or her duty.



Based on the court's decision, a real estate agent/broker with years of experience should have reasonably known. While the facts of every real estate transaction vary widely, taking a hard look at a case like this, and how facts may be interpreted by a judge, tells us something important. Disclose, disclose, disclose. Even if a REALTOR® believes that the buyer is responsible for their own due diligence, the REALTOR® should not forget the utmost importance of their duties and obligations. REALTORS® must stay current on state laws and go above and beyond at all times for clients and all parties in a transaction. This is what will set REALTORS® apart and keep them out of trouble. When in doubt, REALTORS® should consult their brokers. Brokers should seek proper advice from legal counsel or a broker who specializes in the type of real estate being impacted.

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