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RE04R08: Chapter 93A, Consumer Protection and Business Regulation for Real Estate Brokers and Salespersons

This course is designed for real estate brokers and salespersons and provides a comprehensive overview of the application, procedures and potential liability under the Consumer Protection Statute. While this law has far reaching impact on business activities, this course merely puts focus on those elements relevant to real estate practice. While a thorough knowledge of this important law is critical for licensees, it is not a substitution for legal counsel. The actual law is M.G.L. c. 93A, but it is widely referenced as "93A".

I. HISTORY

- A. "Caveat Emptor"
- B. Consumer protection movement
- C. Based upon the Federal Trade Commission Act
- D. First enacted in 1969
- E. Prohibits use of "unfair and deceptive practices"
- F. First protected consumers versus business. Now includes business versus business.

II. EXEMPT FROM 93A

- A. Consumer versus consumer
 - Home seller who sells to a buyer with no licensee involvement.
- B. Must be a business involved for 93A to apply.
- C. Real estate licensee is a business.
- D. Psychological impacts, M.G.L. c. 93, § 114

III. UNFAIR AND DECEPTIVE PRACTICE

- A. Offends public policy or any other concept of fairness
- B. Is immoral, unethical, oppressive or unscrupulous
- C. Causes substantial injury to consumers

IV. PURPOSE OF 93A

- A. Declares unfair methods of competition and unfair or deceptive business practices are unlawful.
- B. Acknowledges and incorporates all interpretations of unfair and deceptive practices included in Federal Trade Commission Act.
- C. Provides for Massachusetts Attorney General to create rules and regulations interpreting the provisions of M.G.L. c. 93A. (see 940 CMR 3.00)
 - Attorney General will usually only act on an industry-wide practice or if a large number of consumers are involved. Private course of action usually required.

V. ILLEGAL PRACTICES UNDER 93A

- A. Fraudulent or willful intent need not be proven.
- B. Heightens licensee responsibility for statements and omissions
- C. Licensees responsible for everything they know
- D. Grey area of responsibility is what a licensee should have known
- E. "Puffing" is now illegal. 93A does not distinguish between opinion and fact.
- F. Other illegal actions and misrepresentations
 1. Any oppressive or otherwise unconscionable act or statement
 2. Failure to comply with laws meant for the protection of the public's health, safety or welfare
 3. Fraud or misrepresentation such as misstatements of facts in negotiations that lead to a contract
 4. Seller provides a licensee false information and licensee relates this to buyer, without identifying seller as licensee's sole source of information, then broker is liable.
 5. Making false claims about a property's construction, durability, safety or strength
 6. Making false claims concerning the ease with which a property can be repaired or maintained
 7. Making false claims about financing terms or availability
 8. Substituting something different than what is advertised ("bait and switch")
 9. Offering guarantees without disclosing the nature and extent of the guarantees
 10. A broker may be held liable for a misstatement in advertising even if the broker later informs a prospective buyer of the error.
 11. Claims or representations concerning any real or personal property which directly, or by omission, serves to deceive a buyer in any material respect.
 12. Failing to disclose to a tenant or prospective tenant any fact that may have influenced the tenant not to enter into the transaction
 13. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.
- G. Generally, a violation of M.G.L. c. 142A (Regulation of Home Improvement Contractors) is automatically a violation of M.G.L. c. 93A.

VI. AFFIRMATIVE DISCLOSURE (940 CMR 3.16 (2))

- A. A licensee must disclose all facts to a buyer or prospective buyer that might influence their decision to buy

WHETHER OR NOT the buyer asks.

B. A previous sale that was aborted by a prospective buyer due to the content of a home inspection must be disclosed to all subsequent prospective buyers.

VII. LANDLORD/TENANT RELATIONSHIPS (940 CMR 3.17)

A. Unfair and deceptive practices may result from conditions of a dwelling unit.

B. Unfair and deceptive practices may result from failure of landlord to meet obligations to tenant.

C. Unfair and deceptive practices may result from imposing requirements of tenant not required by lease agreement.

D. Unfair and deceptive practices may result from providing a lease agreement that is not simple and understandable.

E. The lease agreement must state fully and conspicuously the names, addresses and telephone numbers of landlord and other responsible for care and maintenance.

F. Generally, a violation of M.G.L. c. 186 (Estates for Years and at Will) is automatically a violation of M.G.L. c. 93A.

G. Generally, a violation of the State Sanitary Code (105 CMR 410) is automatically a violation of M.G.L. c. 93A.

H. Generally, a violation of lead paint laws is automatically a violation of M.G.L. c. 93A.

VIII. ENFORCEMENT

A. 30-day demand letter

B. Double or treble damages

C. Attorney fees and costs of collection

D. Damages may be emotional distress

E. An actual purchase or contract is not required for an unfair or deceptive practice to occur.

F. Small claims court

IX. ADVERTISING

A. Bait and switch

B. Must be bona fide effort to rent or sell

C. Misleading advertising

D. Misrepresentations related to durability, safety, strength or condition

E. Misleading financing terms or availability

Statutes and Regulations

M.G.L. c. 93A

M.G.L. c. 186, § 15B

940 CMR 3.00

M.G.L. c. 112, Section 87PP -- 87DDD1/2

254 CMR 2.00-7.00

Cases for Discussion

Commonwealth v. DeCotis, 366 Mass. 234 (1974)

Lantner v. Carson 374 Mass. 606 (1978)

Nei v. Burley 388 Mass. 307 (1983)

Picciurro v. Gaitenby, 20 Mass. App. Ct. 286, 292 (1985)

Underwood v. Risman 414 Mass. 96 (1993)

Urman v. South Boston Savings Bank 424 Mass. 165 (1997)