



# Land Use and Environmental Pitfalls for Real Estate Agents/Brokers

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CIBS Lunch & Learn Educational Session

**Presented By:**

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# CAVEAT EMPTOR!

## Definition

- **“Caveat Emptor”** is a Latin expression which means “Let the buyer beware”. The doctrine of caveat emptor means that in a sale of goods, the seller is under not duty to reveal unflattering truths about the goods. A buyer must buy goods after satisfying himself of their quality and fitness.



## RPL § 443-a. Disclosure obligations

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- Broker not required to disclose that:
  - current or former occupant was HIV positive, AIDS or any other disease highly unlikely to be transmitted through occupancy
  - property was site of a homicide, suicide or death by accidental or natural causes or the location of a felony

## RPL § 333-c. Lands in agricultural districts, disclosure

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- Must disclose if land is partially or wholly in an agricultural district



## **RPL § 242. Disclosure prior to the sale of real property**

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- Lack of utility electric service
- Subject to a gas, electric or water surcharge
- Subject to “green-jobs-green NY on-bill recovery charge”

# Discipline of Realtors and Salespersons

Real Property Law § 12-A	Real Property Law § 441-c
<ul style="list-style-type: none"><li>• Grants to the Department of State the authority to regulate real estate brokers and salespersons.</li></ul>	<ul style="list-style-type: none"><li>• Department of State may revoke, suspend, fine or reprimand a real estate broker or salesperson if that licensee is found to have... Demonstrated <b>untrustworthiness or incompetency</b></li></ul>

# Realtors Responsibility to Disclose Zoning Information

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- State of the law is unclear
- Presently, there is no case law or statutory authority requiring a realtor to disclose zoning information
- However, since 1994, case law, Dept. of State decision and small claims decision impose liability
  - Guzman case, 2d dept. NY appellate division
  - McDermott small claims decision
- **April 19, 2016: Dept. of State – Brokers Duty to Disclose - rests on “demonstrated untrustworthiness”**

## **Ader v. Guzman, 135 A.D.3d 668 (2d Dept (2016))**

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- Residential fact pattern, not commercial
- Summer rental in the Hamptons for \$180,000.00
- Court did NOT impose liability on realtor for failing to disclose that the leased property did not possess a valid rental permit as required by Southampton Town Code



# Guzman Theories of Recovery BOTH REJECTED BY THE COURT

RPL 443 (4)(b)	Breach of Fiduciary Duty
<ul style="list-style-type: none"> <li>• Sets forth content of disclosure form, which does not include rental permit info</li> <li>• Caveat emptor</li> <li>• No duty to disclose in an Arms length transaction, no liability unless there is active concealment</li> </ul>	<ul style="list-style-type: none"> <li>• All realtors have a fiduciary duty to his/her principal</li> <li>• In Guzman, the realtor for the lessor had no duty to the lessee, absent active concealment</li> <li>• Holding significantly distinguished and limited by April 19, 2016 Dept. of State Memo</li> </ul>

## April 19, 2016: Dept. of State Guidance Memorandum

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- Guzman does not permit an agent to be “ignorant” of the legal status of a property, which is being marketed!!!
- McDermott v. Related Assets, LLC, 45 Misc.3d 1205(A)[Civ. Ct, Richmond County, 2014]
  - **BROKERS AND REALTORS ARE CHARGED WITH KNOWLEDGE AND RESPONSIBILITY TO CHECK THE PUBLIC RECORDS**
- Despite Guzman, “a realtor who fails to demonstrate a working knowledge of the property being marketed, fails to demonstrate the level of competency required to transact business as a licensee in violation of NY RPL 441, 441-c”

## Legal Precedent - No Liability

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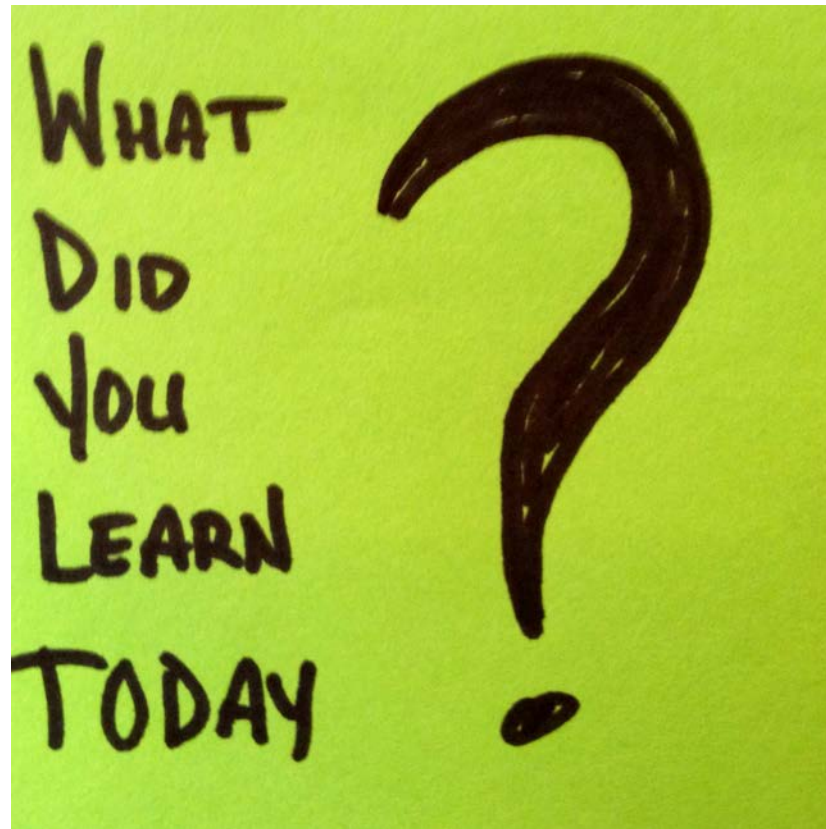
- **Hauser v. Lista, 1994, 1st Dept.** – no liability to realtor for property being used in violation of the Town codes as the violation could not be disclosed by a physical inspection.
- **Coldwell Banker Resid. Real Estate v. Berner, 1994, 3d Dept.** - no liability to realtor for failing to disclose property could not support a drive-up window.

## Legal Precedent - Liability

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- **McDermott v. Related Assets, LLC**, Civil Court, Richmond County, 2014- liability for not disclosing or confirming public record regarding connection to public sewer
- **23 Realty Assocs v. Teigman, 1st Dept., 1995** - liability for not having a “working knowledge of the legal status of the property he is marketing

# What is the take away?



# NYS Department of State Pronouncement

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- Notwithstanding the decision in Guzman, “a broker who fails to demonstrate a working knowledge of the property being marketed, fails to demonstrate the level of competency required to transact business as a licensee in violation of NY RPL 441 and 441-c.”

## ECL 27-2405. Tenant notification of indoor air contamination

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| <ul style="list-style-type: none"><li>• Disclosure obligation applies to owners and their agents</li><li>• Applies to 4 categories of “issuer data”<ul style="list-style-type: none"><li>• Party subject to order under Superfund</li><li>• Participant in State Brownfields Program</li><li>• Muni subject to NYSDEC contracts</li><li>• NSDEC</li></ul></li></ul> | <ul style="list-style-type: none"><li>• Tenants - get notice and fact sheets within 15 days of receipt of test results</li><li>• Prospective Tenants - If E/Cs or Monitoring: get fact sheets prior to signing 1st page of lease-must include in 12 point bold font:<ul style="list-style-type: none"><li>• <b>“NOTIFICATION OF TEST RESULTS: The property has been tested for contamination of indoor air: test results and additional information are available upon request.”</b></li></ul></li></ul> |
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## ECL 21-1317. New use of sites

- State Superfund Sites  
- NYSDEC gets 60 days advance notice of a sale or substantial change in use.





## **6 NYCRR 621.11©**

**Applications for permit renewals, reissuances and modifications, including transferring or relinquishing permits.**

- Transferring environmental permits as part of transaction
- Some permits are transferable generally require 30 days notice to the NYSDEC Due Diligence Discoveries

# FEDERAL CERCLA - Reportable Quantities - obligation belongs to person in charge of facility to report releases/spills to National Response Center



# New York State

<b>6 NYCRR 597.4(b)</b>	<b>6 NYCRR 613-6.2</b>
<ul style="list-style-type: none"><li>• Spills and releases of hazardous substances - Reporting of Releases</li></ul>	<ul style="list-style-type: none"><li>• Petroleum Bulk Storage - Initial Responses</li></ul>

# Today's Presenters

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# Thank You.

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