

A.: Yes. Because the broker's standard of care relates to his or her education and the required education includes courses in real estate and business law, the broker's duties are not limited to matters of fact but also include the legal ramifications of the transaction. (*Alhino v. Starr* (1980) 112 Cal.App.3d 158, 172, 169 Cal.Rptr. 136). For example, in one California case, a court held that a real estate broker had an obligation to know the existence of, and the legal effects of, a "due-on-sale" clause in the existing financing and to disclose and explain this fact to the principal. (*Pepitone v. Russo* (1976) 64 Cal.App.3d 685, 688, 134 Cal.Rptr. 709). In another decision, the court held the broker liable for failing to explain the difference between a sale-leaseback transaction and a sale where the seller receives a secured purchase-money note. (*UMET Trust v. Santa Monica Medical Investment Co.* ((1983) 140 Cal.App.3d 685, 688, 134 Cal.Rptr. 709).

A cautious broker, who is aware of the duties and difficulty of satisfying obligations toward the principal as imposed by the law, will advise the client to seek independent advice or engage an appropriate adviser to advise the client. While this advice may not protect the broker from the performance of the broker's duties, it may well provide an avenue of recourse for indemnity against the attorney when the client seeks recovery from the broker and the attorney knew that his or her advice would be relied on by the broker. For example, in the case of *Home Budget Loans, Inc. v. Jacoby & Meyers Law Offices* (1989) 207 Cal.App.3d 1277, 1283-1285, 255 Cal.Rptr. 483, as a condition to arranging a loan, a mortgage broker required that the prospective borrower consult with an attorney, that the attorney provide written verification that he had explained the terms of the loan transaction to the client and that the client still intended to complete the transaction. The attorney prepared a memorandum addressed "To Whom It May Concern" that verified the requirements when in fact the attorney had not reviewed the documentation and did not advise the client regarding the transaction.

The broker was sued by the client who alleged that she was unaware that the loan would be secured by her home and she did not understand the nature of the transaction because she did not understand English. The broker cross-complained against the attorney for fraudulent misrepresentation. The court found that the attorney knew that his memorandum would be relied on by the broker and that his statements were fraudulent. The court distinguished the liability of an attorney who is not liable to third persons for erroneous advice to his client from a situation where the attorney prepares a communication to his client with knowledge that it will be given to a third person who will rely on the attorney's statements. When the attorney knows that his work product will be relied on by a third person, the attorney owes a duty of care to the third person.