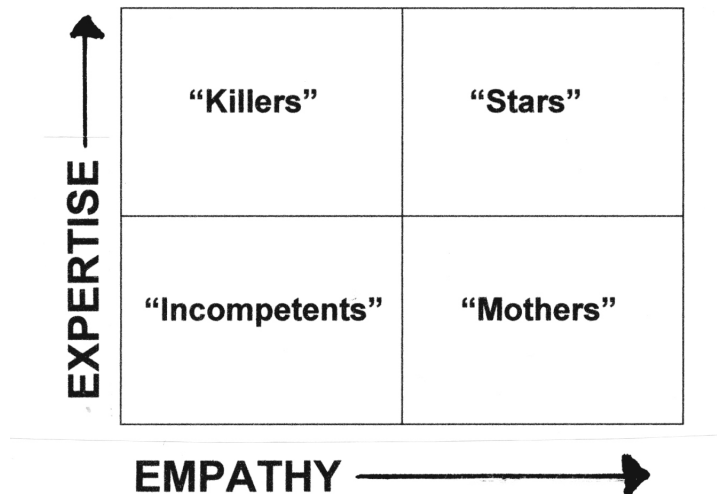


Walking Across the Real Estate Minefield

By Richard Stanley

Getting through a real estate transaction is like walking in a minefield. There are plenty of opportunities for trouble. Avoiding trouble depends upon good instincts and sound advice—both of which are not always easy to come by in our ever-more complex and litigious world. Here are few ways to get from here to there in one piece:

- **Choose your realtor carefully.** Realtors come in many varieties, but, generally, they fall into four categories, as shown on the chart below:



The realtors in the lower left quadrant are the folks who cannot empathize with their clients and their clients' interests and have not acquired basic real estate skills. These folks usually do not stay long in the business, as they are **"Incompetents"**.

The folks in the lower right corner are usually fine people who genuinely care about their clients, but often they can't seem to bring their business relationships to a boil. They **"Mother"** their clients, without guiding them toward the goal of consummating a transaction. These realtors work diligently without success—wasting time.

In the upper left corner are the realtors who are **"Killers"** at getting deals done—when the deals are in their own interests. They may often be successful, but they lack empathy for their clients and their clients' interests. These are the realtors who can't appreciate that they are in a service business or that they have fiduciary duties to their clients. Their commissions are paramount to them. This attitude often leads them—and

their clients—into deep water. Even other realtors avoid the “Killers”, because fair play is a foreign concept to Killers.

Avoid all three of the above types of realtors. Find one of the “**Stars**”. The “Stars” are folks who know how to get deals done—in the interests of their clients. They know that commissions are by-products of successful business relationships based upon professional service of the highest order. Only the “Stars” have the business skills and the empathetic compass to guide clients out of harm’s way.

- **Choose your mortgage broker carefully:** If you are a buyer, work with a mortgage broker who comes highly recommended by the broker’s past clients. If your mortgage broker doesn’t deliver as promised, your money is at risk, not the broker’s.
- **Keep it simple and clear:** The fancier the deal, the more likely the chance of misunderstanding, disappointment—and litigation. Keep the terms of the agreement simple—and put everything in writing. Don’t stray from the customary.
- **When in doubt, disclose:** Anyone who has participated in a real estate transaction recently knows that there is a mountain of paperwork, mostly disclosure-related. A direct relationship exists between today’s disclosures and past litigation. If you are a seller, fill out the disclosures accurately and honestly. Your property is what it is. If in doubt, disclose. Let the buyer decide what matters. If you are a buyer, read the disclosures carefully. Ask questions if you are not sure about disclosure statements. Get answers in writing. Perform your due diligence by hiring competent experts. The cost of such inspections is money well-spent.
- **Don’t agree to “early possession”:** If you are a seller, never agree to let the buyer move in before title transfers. The key to the property is the seller’s leverage. If the buyer defaults, the seller is open to unlimited risk and liability. This is business; don’t be too nice.
- **Don’t agree to “early release of funds”:** If you are a buyer, never agree to release money to the seller before the title transfers. To do so, undermines your leverage. If the seller defaults and has spent your money, then what?
- **Be sure:** If you’re a buyer, be sure that you want to consummate the deal before you run out of contingencies, or “wiggle room”. Changing your mind too late could mean the loss of your earnest money deposit, usually 3% of the purchase price. If you stand up the seller expect a fight for your deposit.
- **Don’t continue to negotiate.** Success cannot be achieved when progress is tied to other events so that gridlock results. Remember: a winner sometimes yields.