

Lease Listings: Look Before You Leap

Leasing. An additional source of income, but at what cost?

A real estate license allows one to not only sell property for another but also, for compensation, to lease another's property. But having the legal right to do something and it being a good idea are two different things. Leasing requires the licensee to know the terms of the lease agreement, and the rules applying to deposits, tenant screening, and income withholding, among other duties and responsibilities. Don't initiate leasing activities without meeting these requirements and without first seeking your broker's approval.

Don't let leasing turn into property management.

A lease listing gives the licensee authority to market an owner's property to find a tenant. Once a lease or rental is agreed to by owner and tenant, the lease listing agent's duties have been completed. While a property manager also may have authority to find tenants during periods of vacancy, the biggest difference between a property manager and a lease listing agent is that a property manager is responsible for the property during a tenancy. The lease listing agent, who continues activity once the lease or rental is signed and initial deposit and rent payments are made, risks unintentionally taking on additional responsibility and potential liability for property management activities.

What issues should a licensee be aware of before signing a lease listing agreement?

1. *Deposits.* Merely holding a tenant's deposit check requires compliance with trust fund log documentation. Cashing a tenant's deposit check requires that the funds be placed in a broker trust account. Since many brokers do not have trust accounts, lease listing agents should consider alternatives such as delivering deposit checks to the property owner or a third-party intermediary, authorized by the owner.
2. *Tenant screening.* Use of third-party tenant screening companies to review an applicant's credit and background is common. Fair housing laws apply to licensees even if an owner may be subject to a narrow exception, such as for renting a single room in an otherwise owner-occupied home. If the owner has delegated tenant selection to the agent, it is important to have written qualification requirements and apply them equally to all tenant applicants. Do not participate in or enable owner discrimination. Be aware of frequently occurring issues, such as the distinction between pets and service and companion animals.
3. *Multiple Listing Service.* Lease listings are only mandatory for residential 1-4 units. Whether voluntary or mandatory, submissions must include an offer of compensation to cooperating brokers.
4. *Compensation.* The C.A.R. Lease Listing agreements provide for potentially different compensation formulas depending on whether a month-to-month rental or fixed-term lease is executed. Compensation can be paid from the owner or, with owner approval, direct from the Tenant who prepares separate checks for licensee compensation and rent, or even third-party depositories who collect all tenant payments.
5. *State and Federal Withholding.* If the owner is not a California resident or is a foreign person, the licensee may be required to withhold a certain percentage from owner disbursements and forward those amounts to State and/or Federal taxing agencies.
6. *Showing occupied properties.* Be knowledgeable about notice requirements to occupants to avoid legal complications if an existing tenant is not cooperative.
7. *Helping owner with repairs.* Such activities may lead to licensee acting as an unlicensed contractor.
8. *Post signature activities.* Take caution to ensure that activities do not constitute property management.
9. *Disclosure considerations.* Some disclosures an owner makes in a lease listing, such as whether there is or has been mold or asbestos, are not disclosed in the lease/rental. Licensee disclosure to a tenant may be necessary depending on agency relationships.