

Agency Relationships & Duties After a Real Estate Transaction concludes

Legal, Contractual, and Practical Advice for **Buyer's** Agents

When does an agency relationship, and accompanying duties, begin and end between a real estate broker or salesperson (collectively and individually, "Agent") and a buyer?

A written Buyer Representation agreement creates an agency relationship between the brokerage and the buyer (see, BRBC paragraphs 1 and 5B). An agency also may be created without a written agreement (see Civil Code §2309), which is common for Agents representing buyers in residential sales transactions. The agency terminates upon the expiration of its terms or completion of the transaction for which the agreement was created (see, BRBC paragraph 1, and Civil Code §2355).

What duties does a buyer's Agent owe to the buyer and others in a real estate transaction?

The Agent owes a fiduciary duty of utmost care, integrity, honesty and loyalty to the buyer and non-fiduciary duties such as honesty, good faith and fair dealing to others in the transaction.

What actions might a buyer's Agent take for a buyer after close of escrow?

If the buyer informs the Agent that the seller has left personal property behind, the Agent can assist the buyer in completing C.A.R. Sample Letter BDRPP, Demand to Remove Personal Property and Debris, which the buyer can then send to the applicable address.

If the seller has remained in the property in violation of the purchase agreement or post-closing occupancy agreement such as Seller In Possession Addendum (SIP) or Residential Lease After Sale (RLAS), the buyer's Agent may give the buyer a C.A.R. Sample Letter DSV, Demand That Seller Vacate, to send the seller in an attempt to encourage the seller to leave without the need for legal action. The Agent should also inform the buyer of the need to seek legal counsel to discuss options if the seller continues to remain in possession.

If the buyer contacts the Agent about a broken appliance or system, the Agent may suggest the buyer contact the home warranty company that provided the policy purchased in the transaction.

If the buyer contacts the Agent about a discovered defect in the property, the Agent should advise the buyer of the recommendation to seek legal counsel and remind the buyer of the obligation to mediate disputes before filing a legal action. While negotiating a post-closing dispute on behalf of the buyer could resolve an issue without any legal action being filed, it could also result in the continuation of the previous agency or the creation of a new agency, and depending on the extent of the negotiation and any possible recommendations made by the Agent, could expose the Agent to additional responsibilities for mishandling the negotiation or potentially even practicing law without a license, especially if a statute of limitations or other reason that may limit a buyer's legal remedies are at risk.

Regardless of the circumstances, the Agent should always inform the Agent's broker or office manager of the situation, and act in accordance with the instructions of the person acting on behalf of the brokerage.