

Agency Relationships & Duties After a Real Estate Transaction concludes

Legal, Contractual, and Practical Advice for **Lease Listing** 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 rental property owner (“RPO“)?

A written Lease Listing agreement creates an agency relationship between the brokerage and the RPO (see, LL paragraphs 1 and 13B). The agency terminates upon the expiration of its terms or completion of the transaction for which the agreement was created which would ordinarily be when the RPO and tenant sign a lease or rental agreement (“lease”) (see, LL paragraph 1, 13F and Civil Code §2355). By contract, the agency may continue until the tenant takes occupancy, the Agent delivers keys to the tenant, the tenant conducts a pre-possession or post-possession walk-through, or when a Move-In inspection is conducted. (see LL, paragraph 13F).

What duties does a lease listing Agent owe the rental property owner and tenant in the transaction?

The Agent owes a fiduciary duty of upmost 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 lease listing Agent take, OR AVOID, for a RPO or tenant after lease execution?

The Agent should NOT engage in any property management activity. That includes such things as collecting rent, making or arranging for repairs, filing paperwork with local rent oversight agencies, holding or returning tenant security deposits, paying bills related to the premises, working with RPO or attorneys to give tenant legally-mandated notices, such as a Termination of Tenancy or Change in Terms of Tenancy or Notice to Quit, and unless checked in paragraph 13F of the LL, assisting the tenant with a walkthrough or preparing a Move In inspection or other listed activities. If a tenant contacts the Agent about an issue with the premises, the Agent should refer the tenant to the RPO. Assisting a tenant after execution of the lease poses a legal risk in that a tenant may be led to believe that the lease listing agent is acting as a representative, or agent, of the tenant even if the lease defined the Agent as an agent of the RPO exclusively (see RLMM, paragraph 41A). As agency can be created by ones words and deeds in addition to the express language of a contract, the Agent could owe both parties a fiduciary duty from that point forward, which a RPO, expecting exclusive representation, could argue is a breach of the duty to the RPO.

If paragraph 3E of the LL is checked, the RPO agrees to compensate the Agent if the tenant purchases the property during the term, or any extension, of the lease. If the broker is informed of the purchase, in advance, by either RPO or tenant, a court could very well conclude that in exchange for the compensation promised to be paid by the RPO the Agent has an obligation to act in an agency capacity for the sales transaction. This would entail all the usual responsibilities of a sales agent, such as helping with the preparation of a purchase agreement, and contacting escrow. The purchase agreement should identify whether the Agent is acting as an exclusive agent for the RPO/seller or a dual agent representing both RPO/seller and tenant/buyer.

Regardless of the circumstances, if the Agent is asked to or does perform activities beyond the scope of the lease listing, 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.