

Agency Relationships & Duties After a Real Estate Transaction concludes

Legal, Contractual, and Practical Advice for **Listing** Agents

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

A written listing agreement creates an agency relationship between the brokerage and the seller (see, RLA paragraphs 1 and 12B;). An agency also may be created without a written agreement (see Civil Code §2309), which is rare for agents representing sellers 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, RLA paragraphs 1 12F and Civil Code §2355).

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

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

What actions might a seller’s Agent take for a seller client after close of escrow?

If a seller has left personal property behind, and pursuant to paragraph 8B(1) of the RPA a buyer serves on the Agent a notice to remove the unwanted items that is addressed to a seller, the Agent should (i) forward the notice to the seller, if the seller’s address is known to the Agent or (ii) inform the buyer that the Agent does not have an address for the seller. In either case, the Agent may use C.A.R. Sample Letter SARDPP to document the seller’s agent’s actions. Letter SARDPP also acts as a disclaimer of any continuing agency relationship and an instruction not to send further documentation to the Agent.

If a dissatisfied buyer, individually or through counsel, sends to the Agent a demand letter threatening legal action against the seller, the Agent should similarly forward the letter to the seller if the seller’s contact information is known, or the Agent should inform the buyer, or attorney, that the broker does not have the seller’s current address.

When forwarding either a personal property request or demand letter, a good practice would be to send the seller a copy of the purchase agreement, advise the seller of the recommendation to seek legal counsel, remind the seller of the obligation to mediate disputes before bringing any legal action, the Agent could even ask the seller how the seller intends to proceed.

If the Agent takes any further action, the Agent should first confirm in writing the seller’s instructions. While negotiating a post-closing dispute on behalf of the seller 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 a Agent, could expose the broker to additional responsibilities for mishandling the negotiation or potentially even practicing law without a license.

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.