



LEGAL HOTLINE Q&A

FROM GET THE FACTS, May 14, 2024

Question:

My office recently received a form called a "touring agreement" that a local brokerage is promoting. Please share your thoughts on this form. It purports to allow brokers to show homes without establishing an agency relationship and without any agreement for buyer to compensate broker and simultaneously says that the broker must adhere to all non-waivable duties under state law. The form says that broker and buyer will enter an agreement after showing homes if buyer wants more services from broker. 1) The term "non-waivable duties" leads an agent and the buyer to believe that there are duties they can waive. Can we pick and choose the agency duties we want to waive. 2) I don't believe I can show a home to a buyer in a non-agency capacity unless I am the listing agent. Correct? 3) If an agent shows a home and the buyer wants to write an offer then they would be negotiating the services agreement and an offer. The buyer could refuse to compensate the broker and move to another agent or the listing broker.

Answer:

DB is correct. The "touring agreement" is not consistent with Washington law. Showing homes is the provision of RE Brokerage Services and Washington law is entirely clear that broker MUST enter a services agreement with a client "before or as soon as reasonably practical after commencing to provide RE Brokerage services."

The services agreement must include statutorily required terms that this "touring agreement" does not include. If broker shows homes, much less multiple homes, to buyer without a services agreement, broker is likely in violation of Washington law. One of the required terms of the services agreement is an agreement as to the compensation broker will earn in exchange for the provision of RE Brokerage Services. DB is correct, for a variety of reasons, that if a buyer broker relies on this touring agreement to show homes, broker may be practically and statutorily prohibited from taking any compensation from this buyer, even if this buyer chooses to purchase one of the homes broker shows buyer.

While there are a very small number of Agency Law duties that can be waived, the vast majority of duties are mandatory. The language in the "touring agreement" would be confusing to consumers and brokers as it compares to the "pamphlet on RE agency" that brokers must provide to buyers. Additionally, Washington's Agency Law makes clear that anytime a broker provides RE Brokerage Services to a buyer, broker is an agent of the buyer unless broker has a written agency agreement with the seller or is the seller. This form says that broker will show properties to buyer without forming an agency relationship with buyer. That is an impossibility under Washington law.

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