



Using An App to Hire a Temporary “Showing” Agent? *Beware!*

You can land in hot water with TREC if you don’t know what you are doing.

Mobile apps used to “hire” another license holder to show your buyer a property are popping up everywhere. But will you be violating TREC’s rules if you use the app?

Compensation Issues

Since showing a property is an activity that requires a license, an agent may not receive or pay valuable consideration for that activity except through their sponsoring broker or with written consent from their sponsoring broker. Do you have written consent from your broker to pay and/or receive money through the app?

Representation and Disclosure Issues

Keep in mind that in Texas there is no recognized license classification of “showing” agent. An agent either represents the buyer or the seller (or both as intermediary with clients’ consent).

So who do you represent when you are a temporarily hired “showing” agent?

If you work for the same brokerage as the agent who “hired” you, it might not be an issue since the buyer is represented by the broker and both agents are sponsored by the same broker. Still, when hired as a “showing” agent you must make it clear to the client who you represent.

But what if the showing agent is not from the same brokerage as the hiring agent?

Under current Texas law, if an agent aids a buyer in a transaction without an agreement to represent the buyer, that agent is a sub-agent of the seller and must put the interests of the seller first. Has this been disclosed to the buyer prior to their consent to another agent showing them the property? Has the seller consented to this arrangement?

Practice Tip: Limit use of a “showing” app to agents within the same brokerage when broker has a written policy and consents to payments.

What about other disclosures?

An IABS notice is required to be given at the first substantive communication about a specific property UNLESS the “showing” agent knows for certain that the buyer is already represented by the “hiring” agent - but how do you know the buyer is actually represented by the “hiring” agent? Another complication - what if the agent showing the house is from the same brokerage firm as the listing agent? Do intermediary disclosures have to be given? Whose responsibility is that – the “hiring” agent or the “showing” agent? Figuring out who the “showing” agent represents and giving all appropriate disclosures to the buyer is a paramount duty for the “showing” agent in this temporary situation.

More Questions than Answers

Other questions arise about the temporary showing agent’s function and duties in regards to the buyer. Are you going to answer any questions about the property? If not, has the “hiring” agent made it clear to the buyer that they are going to be shown a property but no questions will be answered at that time? Has the buyer consented to being merely escorted with no information available to them during the showing? Is the “hiring” agent or the “showing” agent violating the agent’s minimum duty to answer the buyer’s questions? If you do answer questions, how does that affect your role and liability for the transaction? Is the “showing” agent obligated to disclose known defects with the property when showing it?

What if the buyer decides they like the “showing” agent better and want to work with the “showing” agent going forward? What if the buyer does not like the house after the showing and the temporary “showing” agent knows of another house nearby the buyer might really like? Can the “showing” agent take them to see it? Who is representing the buyer then? Who earns the commission if the buyer buys that second house?

Be Careful!

Keep in mind that license holders have a special fiduciary duty to their clients and a duty to treat all parties to a transaction fairly. Representation is not a “service” that can just be parceled out at will by one agent to another.

If all appropriate consents and disclosures are not given and received from all necessary parties, this “time-saving” showing app may end up costing the agent and their broker both time and money dealing with an administrative action or a civil lawsuit.

