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## **Legal Hotline Q & A**

**From Get the Facts 04/04/17**

**QUESTION:** I recently moved to a different real estate firm. When I tried to change the sign at my listing to show the new firm's name, my old firm told me it was their listing, not mine. Then they said I still needed to return office keys and transaction files. Am I missing something? I thought clients and files belonged to me.

**ANSWER:** Broker is mistaken. Every listing agreement is a contract between a seller and the listing firm. The listing broker is not a party to the contract and has no authority to terminate or "move" a listing from her old firm to her new firm. Although listing broker is likely the person who signed the listing agreement to create the contractual relationship, broker signed only as an agent of the listing firm and not as a party to the contract. Most RE firms empower brokers licensed to the firm to enter listing agreements on behalf of the firm. However, any transfer or termination of a listing will require written authorization from both the seller and the designated broker of the listing firm. A broker cannot amend a listing agreement by changing the yard sign.

As a result, broker's old firm is correct. Broker is not free to put a listing sign for her new firm in seller's yard. Seller is obligated to an exclusive listing contract relationship with the original listing firm until the listing either expires or the seller and designated broker mutually agree to terminate the listing agreement (unless, of course, the preferred outcome occurs and the property sells during the term of the listing).

Similarly, buyer agency relationships established between broker and a buyer, while broker is licensed to a firm, belong to the firm. Broker has no independent ability to establish any agency relationship. In every situation, broker is acting as an agent of the firm and thus, agency relationships established by a broker are actually relationships between a consumer and the broker's firm.

The answer to the question regarding files is similar. Every firm is required to maintain a transaction file for all RE brokerage services provided by the firm. Brokers licensed to the firm are required, by Washington law, to surrender ALL documents for the transaction file including all agency agreements (i.e. listing contracts/buyer broker contracts) to broker's managing broker for retention by the firm in the firm's transaction file. The transaction file is the property of the firm. Broker's removal of the firm's transaction file(s) (or failure to submit a listing or transaction file to the company in the first place) could lead to serious allegations of broker misconduct. Broker should immediately return any transaction file she removed from her old firm.

Finally, return of office keys, payment of any outstanding bills owing to the old firm and similar issues of office management should be handled by broker and firm in a professional way. If broker and firm have an independent contractor agreement, it may address the



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handling of these office management issues and broker's failure to adhere to contractual requirements could impact broker's contractual right to outstanding or pending compensation. If broker requires assistance in working through any of these issues with her former firm, broker should consult legal counsel.

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