

Show Me The Money, (or I Won't Show You The Property)

You love being a Realtor, do you not? And since it is a calling, a passion, and a labor of love, does that mean that one is obligated to work for free or for less than one thinks one is worth?

Frequently, I am asked whether a buyer's agent is obligated to show properties where the offer of compensation to buyers' agents is less than what one is willing to work for, and sometimes there is simply no compensation offered at all.

The question then is whether you are obligated to search for, make your buyer aware of, and show any such non-compensating properties. The answer to the question really lies in the nature of your agreement with your buyer client. Have you either promised that you will do so or is it somehow implied in the brokerage relationship?

Absent a written agreement with your buyer, whether one calls it a retainer agreement or buyer brokerage agreement, Virginia law provides "that a licensee engaged by a broker shall perform in accordance with the terms of the brokerage relationship" and "[seek] property of a type acceptable to the buyer and at a price and on terms acceptable to the buyer." As a result, it would seem that an agent is in fact obligated to seek out and show such properties (including FSBOs) – even where there is no offer of compensation at all.

So, the key is to enter into a written agreement with your buyer client by which the buyer acknowledges and agrees (really instructs) whether you will or will not seek out such non-compensating properties. Typically, the buyer brokerage agreement would provide for the buyer to pay your commission in the event seller does not, and it is through this mechanism, process and discussion by which you are relieved of having to work for free or for too little money. In summary, you may, in fact, refuse to show

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property where you will not get paid, or not get paid enough, as long as you have an agreement with your client not to do so.

So, since I've explained that you can in fact require someone to show you the money, how about showing me some referral love? As always, please feel free to e-mail me at bdlytle@lytlelaw.com if you have any questions or suggestions for future articles.

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