

Relocation Directors Confront an Ethical Dilemma

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Relocation directors in real estate firms face an ethical dilemma that they may not recognize. Every day, relocation directors receive requests for assistance from corporate employers and relocation management companies. These requests include: listing inventory homes; broker's market analyses on inventory homes; pre-purchase broker's market analyses for transferees; and homefinding assistance for incoming transferees. Looking over the list, it is clear that some of these requests fall outside the real estate firms' traditional sphere of operations. For example, the broker's market analysis traditionally has been part of an agent's duties to the seller. In many jurisdictions, there is no clear legal precedent allowing agents to perform this service for a purchaser, and many relocation directors will refuse these assignments.

Other requests made of the relocation director, such as providing homefinding assistance to incoming transferees are, however, routine- yet it is not always clear where the relocation director's loyalties lie in these transactions either.

Relocation literature does not explore the subject fully. E-R-C's "Guide to Employee Relocation and Relocation Policy Development" refers to the real estate broker and other service providers as an extension of the corporate relocation program. That, however, appears to be a description of how service providers are perceived by corporate administrators and transferees, and does not clarify where a relocation director's loyalties lie when the interests of the corporation and the transferee are not the same, let alone where they lie when the interests of either conflict with those of a seller for whom the brokerage has listed a property.

The purpose of this article is to report the results of a survey of relocation professionals' perceptions about where relocation directors' loyalties belong and what the implications are for the way the industry operates if these attitudes are not, in fact, correct.

THE STUDY POPULATION

Two industry groups were studied. The first consisted of 100 relocation directors from real estate brokerages across the country. They represented very small offices (the smallest had only two brokers and no agents) and megabrokers, as well as those in between. They represented national real estate companies (e.g. Coldwell Banker, Prudential, Century 21, ERA) and independent brokerages. Every region of the country and all but one state was represented (The E-R-C Directory listed no members in South Dakota). Forty six percent of the study population had earned the Certified Relocation Professional designation.

The second group consisted of 52 individuals from the corporate side of the equation. This included some relocation management companies as well as corporate relocation administrators. They were selected from the E-R-C Roster of Members and from the memberships of other HR professional organizations.

THE RELOCATION DIRECTORS

In each interview, the relocation director was asked for a response in six areas: employment status with the brokerage; license status; ability to list and sell properties; whom the relocation director believes her or she represents; whether the source of the business makes any difference in the answer; and whether he or she feels an obligation to report detrimental information regarding the transferee back to the corporation.

EMPLOYMENT STATUS: In order to lay the foundation for the later questions, it was important to establish the nature of the various employment arrangements within the industry. Seventy members of the relocation director population are employees of the brokerage for which they work. Another 22 are independent contractors. The remaining eight operate under a combination of the two employment arrangements.

LICENSE STATUS: Next was to determine whether the relocation director held a current real estate license. This had a direct influence on the third question. An overwhelming 94 members of the study population are, in fact, licensed to sell real estate in their various states. None of the remaining six members are licensed. Interestingly, one of the relocation directors had given up their license because of the very questions raised in this study.

ABILITY TO SELL PROPERTY: One question in doing the survey was whether or not relocation directors' perception of whom they represent is governed by their ability to list and sell property. Fifty nine members of the study population are prohibited by corporate policy from listing and selling property. Another 24 members of the population are able to list and sell, but choose not to. Most of the respondents in this category said that the ability to list and sell does not make any difference because they are too busy performing their functions as relocation directors to worry about trying to use their licenses in the normal sense. Seventeen respondents, primarily from the smallest firms, do list and sell property.

REPRESENTATION SCENARIO: Each of the 100 relocation directors was presented with the following scenario: "You are sitting at your desk and the telephone rings. On the other end is a corporation that is moving a transferee into your area. Typically, the relocation department assigns the transferee to an agent. Unless a buyer brokerage agreement is in place, that agent represents the seller. In the above scenario, whom does the relocation director represent?"

Twenty nine of the 100 relocation directors indicated that they represented the seller because that is "whom the law says they represent." Another 28 directors stated that they represented the corporation. In almost every case, their reasoning for their response was that they "represent the entity that gives them the business."

Equally interesting is that another 20 directors stated that they represent no one. These directors stated that they are truly not involved in the sales transaction and, therefore, operate more or less as a facilitator whose responsibility is to ensure that the services are properly delivered to all parties.

Ten of the remaining directors think they represent the transferee; seven think they represent the broker; four think they represent the seller and the corporation; and one thinks he represents the transferee and the corporation.

SOURCE OF THE BUSINESS: Four of the directors think the source of the business makes a difference in the answer to the last question. However, none could give a concrete reason. Ninety six respondents believe that it makes no difference.

OBLIGATION TO REPORT INFORMATION TO THE CORPORATION: Each of the directors was asked whether he or she has an obligation to report back to the corporation any information he or she receives that might indicate that the transfer is not in the best interests of the transferee, corporation, or both. Examples included, but were not limited to, immediate family terminal illness not disclosed to the corporation, drug abuse on the part of the transferee, and an indication that the transferee is using the relocation merely for the purpose of getting to a particular location and is planning to quit once the move is completed.

The results are fairly straightforward. Forty eight members of the population indicated they would definitely report the information back to the corporation. Thirty one members of the population stated that "under certain conditions" they might report the information back to the corporation. The most often mentioned criteria fell into two areas: whether the relocation director has a written contract with the corporation and whether he or she has permission from the transferee to report the information back to the corporation.

Twenty directors stated that "under no circumstances" would they report information back to the corporation. These respondents believe that is not their field and indicated that they would not know what information to report back to the corporation. These respondents believe that if they did tell the corporation, they would not be acting fairly with the transferee. One relocation director refused to answer the question.

Of the 48 relocation directors who said they would report the information back to the corporation, 16 said they represent the corporation, 13 said they represent the seller, and another 13 said they represent no one in the process. Three respondents stated that they represent the buyer and another three stated that they represent the broker. Interestingly, none of the directors who stated they represent either the seller or the corporation or the buyer and the corporation feel any obligation to report the information to the corporation.

THE CORPORATE REPRESENTATIVES

The second population surveyed included both relocation management company and corporate representatives. These respondents were asked three questions.

RELOCATION DIRECTOR SALES ABILITY: The first question asked of corporate and relocation management company representatives was whether or not they wanted the relocation director to be able to list and sell properties. The overwhelming response was that the needs of the corporation are best met in a situation in which the relocation director manages the relocation department full time and does not list and sell property. Out of 52 respondents, 34 stated that they do not want the director to be actively engaged in real estate sales. The general belief is that if the director is out listing and selling property, then the only way he or she can control delivery of service to the transferee is to handle the employee him- or herself. Of the remaining 17

respondents, six indicated that the director should be able to list and sell, six stated that they have no preference, and five stated that it is corporate policy not to get involved.

REPRESENTATION SCENARIO: The corporate and relocation management company representatives were asked to respond to the same scenario as the relocation directors. The responses from the corporate and relocation management company representatives mirrored closely the responses from the relocation directors. Of the 52 respondents, 16 think that the relocation director represents the seller according to real estate law in the various states. Of the remaining respondents, 11 think the director represents the corporation, six believe that the director represents the transferee, seven think the director represents the broker, three believe the director represents no one since he or she is not directly involved in the sales transaction, three indicated that the director represents both the buyer and the corporation, and six opted not to answer the question.

OBLIGATION TO REPORT DETRIMENTAL INFORMATION TO THE CORPORATION: Finally we asked the corporate and relocation management company representatives whether they expect the relocation director to report to the corporation any information they hear that might indicate the transfer is not in the best interests of the transferee, corporation, or both.

About half of the corporate representatives indicated that they believe the directors should report the information to the corporation regardless of whom the director represents. About a quarter of the respondents believe that it is expecting too much of the director to report information, and about 10 percent said that, under certain circumstances, the information should be reported to the corporation.

IMPLICATIONS

Based on the results of this survey, a number of important questions arise. For example, since most brokerage firms consider the relocation director an employee, and in some cases the broker involves the relocation director as part of the management team, are the relocation directors' fiduciary obligations the same as those of the broker? Is an individual who is licensed as an agent, but not allowed to list and sell property, covered by agency disclosure laws and required to identify him- or her-self as an agent of the seller? If the director represents the transferee, what agency disclosure obligations result? Finally, if the director represents both the corporation and the transferee or both the corporation and the seller, is he or she obligated to disclose dual agency?

Of all the areas this survey investigated, the extent of the relocation director's obligation to report detrimental information to the corporation caused the most discussion. How a respondent answered the question depends on whom the respondent believes the relocation director represents and in the nature of the information to be reported to the corporation. Relocation directors indicated that they often become aware of a broad spectrum of information ranging from drug abuse to family emergencies that they tend not to report to the corporation. A significant number of respondents were concerned about violating transferee's trust by reporting information that had been shared in confidence. There was a correlation between those who

believe that the relocation director is obligated to report information to the corporation and those who believe the relocation director represents the corporation.

Although the results of this survey are somewhat ambiguous, it appears respondents to the survey predominantly believe that the relocation director should not be allowed to list and sell property; represents the seller in the transaction; and should pass critical information to the corporation. The implications for relocation can be analyzed by breaking the process down into component pieces.

HOMESALE: If these findings are correct, then there is no conflict here. The corporation or relocation management company, in fact, hires the real estate brokerage to produce a sale of the transferee's residence at a price that is both proper and reasonable.

PRE-PURCHASE MARKET ANALYSIS: Many relocation directors are asked to provide a market analysis for the transferee prior to the transferee making an offer on a property at the destination. The relocation management company or the corporation has written this aspect into the relocation policy to help the transferee "buy smart" and to avoid a later loss on sale situation.

The National Association of Realtors Code of Ethics and the rules of agency basically tell us that an agent cannot disclose any information that might be detrimental to the interests of his or her principal. The question, therefore, needs to be asked whether in this situation the relocation director and/or the agent to whom he or she gives the assignment represents the seller, as the survey suggests, and if so, whether he or she can still provide a value opinion to the corporation. The relocation director is not prohibited from providing an outside party with the public records of the sales in any given area. The problem arises when the agent provides that outside party with an opinion that may be contrary to the list price of the property. Disclosing that opinion, in this case, may not be in the best interests of the seller, whom we have said the agent represents. To carry this one step further, if that agent used the MLS system to derive the data, and if the MLS system still makes a blanket offer of subagency, where does this place their responsibilities?

CONCLUSION

The purpose of this article was to investigate industry perceptions about whom the relocation director represents. The survey results confirm that we need to carefully review our positions from a legal and service standpoint so as not to cause conflicts. We all agree that the bottom line is how best to provide quality service to the transferee. the question arises as to whether, in today's industry structure, we are doing that. This is especially true in those areas where basic agency relationships have become confused.

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