

Letter to the Editor: Ethics, Liability and Electronic Lockboxes

By Dan Hayden, REALTOR®, Associate Broker, Mediator, e-Pro®, SRES®

I recently hosted a Brokers open and among the feedback I received was variations of the same theme: “don’t use the iBox”. Some folks were so bold and so adamant that they felt comfortable telling me they would not show a house in this area that had one, even though they admitted to having an AcitveKEY or eKEY.

I’ve also had buyers’ agents call to show one of my listings & when they found out there was a iBox on the door they promptly stated that “they won’t show homes with those things on them” & ‘their office won’t use them.” They canceled the showing even after I offered to meet them for their showing (I also make the offer in the agent remarks in TREND).

I began thinking more about the issue, is this an ethics violation? Could it be considered steering? What were these agents telling their buyer clients who wanted to see the listing?

No one seemed to know for sure, obviously no one knew of an ethics complaint had yet been made about the issue.

So I did some digging, Standard of Practice 3-8: REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. What are these REALTORS® telling their clients?

Or Standard of Practice 15-2: The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. What are they saying about me or my company?

Steering? I don’t see how as it isn’t discriminating against a person just technology.

I also called Colin F. McGowan, Founder and President of The Frederick Academy of Real Estate, real estate instructor and expert witness who I’ve know for a while. He and I kicked the issue around and he thought of something I hadn’t; liability. Could a buyer miss out on their dream home because of a reluctance to show a home with an iBox? What happens if they are mislead about its availability? His assertion was that indeed any REALTOR® who refused to show a home because of the iBox would leave themselves & their broker open to not only an ethics complaint but also a lawsuit. He believed that for now E&O insurance would likely cover any claims (not counting any deductibles) but recommended that an individual or broker may want to check that with their E&O carrier.

I understand that some areas other types of boxes are the norm; but to refuse to show a buyer a home because you are against the use of an iBox? How is that in the best interest of your buyer client?

I’ll never be privy to the communications of another REALTOR® & their client but if a client discovers they have been mislead about a listing by their agent, what actions might the affected consumer take?

Is the risk worth the reward?

Dan Hayden

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