

VOLUME I: NUMBER 7: AMATEUR REAL ESTATE AGENTS

by Rabbi Aron Tendler

Question:

A Yeshiva student, who recently became engaged, asked a friend if he knew of a home for sale in a certain neighborhood. The friend mentioned to him a possible home for sale that he happened to know about in that neighborhood.

The student then went with his bride, parents, and future in-laws to see the home. After tedious, difficult, negotiations, the young couple purchased the home.

The friend who originally suggested the home is now requesting a finders fee, as is customary to pay a professional real-estate buyer's agent who suggests a home on which a deal is finalized. The Yeshiva student counters that he should not be obligated to pay his friend the finders fee for the following reasons:

1. He had asked his friend as a favor, with no intention of paying him.
2. Since the friend is not a professional, licensed, real estate agent, he is undeserving of any fee. The most that he is willing to do is to buy him a nice present, or pay him a token amount.
3. Even if the friend is considered an agent, since he only suggested the home but was not involved in the negotiations at all, the most that he should receive is the fee of someone who suggests a business deal. The going rate for that is 1/3 of the full fee of a professional broker.

What is the Halacha?

Answer:

- A. If the friend who suggested the home admits that at the time that he mentioned it, he had no intention of demanding a fee and did it as a favor, he has no right to claim any fees at all.

However, if the friend claims that he never intended to suggest it for free, he planned on eventually collecting a fee (or even if he didn't have any specific intention at all) - he has a

right to collect full payment; the amount that would be collected by a professional, licensed, real estate agent in his area.

2. If it is known that in their area the custom is to pay an amateur "agent" a minimal fee, he could only claim the minimal amount. However, in places where this is not clearly the custom, the agent should receive the full fee, as stated above.

Sources:

The Rema in Choshen Mishpat 264:4 states, "Any person who does work, or a favor for his friend, the recipient is not able to say, you did this for free because I didn't ask you (to do it), rather he must pay him his wages."

It is clear from the Rema that any person, regardless of age or expertise, who does a service for his friend, if it is customary to pay for this service in that area, the service provider has a right to demand payment. The recipient is unable to argue, "You were just doing me a favor."

It is also clear from the first part of this Halacha, and from the Biur HaGra there (13) that anytime that someone is interested in having work done for him, even if it was done without his request, he must pay for the work. The source of this obligation is the Gemara in Bava Kamma (101a) that discusses the Din of "a gardener who goes down and plants in someone's field without his permission." [Obviously, this Halacha needs to be carefully applied. The recipient of the service only needs to pay the amount that he benefits from the service. There are many variables that need to be taken into consideration, such as quality of performance and the type of work that was desired.]

However, the Nesivos Mishpat (12:5) states that if the intention of the worker when he did the work was to do it for free, and only after completing the work did he decide that he would like to get paid for it, he does not have the right to demand payment.

I would like to add that it is customary among real estate agents (and among Shadchanim), that if two people are involved in a match, the one who suggested it receives 1/3 of the fee, and the person who carried out the negotiations and pushed the deal through receives 2/3 of the fee. However, this is only if the second person who pushed it through is unrelated to either party. But, if an agent suggested a deal, and the parties themselves negotiated and pushed it through, the agent who suggested it receives the entire fee. It is considered as if he is the sole agent involved, and the parties who negotiated cannot subtract from his fee.

This class is translated and moderated by Rabbi Aaron Tendler of Yeshivas Ner Yisroel in Baltimore. Rabbi Tendler accepts full responsibility for the accuracy of the translation and will be happy to fax originals of the articles in Hebrew to anyone interested.

Feedback is appreciated! It can be sent to atendler@torah.org.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!