

Working With Executive Search Firms

HIRING MANAGERS

Listing Agent

If you are in search of Top Tier Gold rated talent, you may want to “list” your positions for hire with an executive search firm. If so, you will sign a “listing agreement” authorizing the firm and its agents to represent you in your search for candidates as your screening agent. You may also be asked to allow agents from other firms to help find the talent you're looking for. Be sure to read and understand the listing agreement before you sign it. Your agent must give you a copy of the listing agreement after you sign it.

Responsibilities to Hiring Firm: The listing firm and its agents must

- promote your best interests
- be loyal to you
- present all qualified candidates equally
- Field all calls and resume submittals from other Search Firms and Talent Agents
- follow your lawful instructions
- provide you with material facts that could influence your decisions
- and use reasonable skill, care and diligence.

Once you have signed the listing agreement, the firm and its agents may not give any confidential information about you or your firm to prospective talent or their agents without your permission so long as they represent you. But until you sign the listing agreement, you should avoid telling the listing agent anything you would not want a candidate to know.

Services and Compensation: To help you hire your talent, the listing firm and its agents will offer to perform a number of services for you. These may include

- conducting a search by means of cold calling, referrals and networking
- pre-qualifying potential candidates
- scheduling interviews
- getting post interview feedback from the candidate to help you "get inside their head"
- checking references after the 1st interview and before the 2nd
- helping you determine a starting salary
- feeling the candidate out with a verbal offer before a written offer is made
- educating the candidates about the pitfalls of accepting counter offers
- reviewing all written offers with you
- and otherwise promoting your interests.

For representing you and helping you find Top Tier Gold rated talent, you will pay the listing firm a sales commission or fee. The listing agreement must state the amount or method for determining the sales commission or fee and whether you will allow the firm to share its commission with third party agents representing a candidate.

Dual Agent

You may even permit the listing firm and its agents to represent you and a candidate at the same time. (*Most recruiting services in today's market fall under this category.*) This “dual agency relationship” is most likely to happen if an agent with the listing firm is working as a talent agent with someone qualified for your position. If this occurs and you have not already agreed to a dual agency relationship in your listing agreement, your listing agent will ask you to amend your listing agreement to permit the agent to act as agent for both you and the candidate. It may be difficult for a dual agent to advance the interests of both the talent and the hiring firm. Nevertheless, a dual agent must treat talent and hiring firms fairly and equally. Although the dual agent owes them the same duties, candidates and hiring firms can prohibit dual agents from divulging certain confidential information to the other party. Some firms also offer a form of dual agency called “designated agency” where one agent in the firm represents the hiring firm and another agent represents the talent. This option (when available) may allow each “designated agent” to more fully represent each party. If you choose the “dual agency” option, remember that since a dual agent’s loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of what your relationship is with the dual agent and what the agent will be doing for you in the transaction.

CANDIDATES

When investigating opportunities, you may have several choices as to how you want an executive search firm and its agents to work with you. For example, you may want them to represent only you (as a talent agent). You may be willing for them to represent both you and the listing firm at the same time (as a dual agent). Or you may agree to let them represent only the hiring firm (listing agent or subagent). Some agents will offer you a choice of these services. Others may not.

Talent Agent

Duties to Candidate: If the executive search firm and its agents represent you, they must

- promote your best interests
- be loyal to you
- follow your lawful instructions
- provide you with material facts that could influence your decisions
- and use reasonable skill, care and diligence.

Once you have agreed (either orally or in writing) for the firm and its agents to be your talent agent, they may not give any confidential information about you to hiring firms or their agents without your permission so long as they represent you. But until you make this agreement with your talent agent, you should avoid telling the agent anything you would not want a hiring firm to know.

Unwritten Agreements: To make sure that you and the executive search firm have a clear understanding of what your relationship will be and what the firm will do for you, you may want to have a written agreement. However, some firms may be willing to represent and assist you for a time as a talent agent without a written agreement. But if you decide to take an interview, the agent must obtain a written agency agreement before sending your resume. If you do not sign it, the agent can no longer represent and assist you and is no longer required to keep information about you confidential. Be sure to read and understand any agency agreement before you sign it. Once you sign it, the agent must give you a copy of it.

Services and Compensation: Whether you have a written or unwritten agreement, a talent agent will perform a number of services for you. These may include

- finding a desirable position
- scheduling interviews
- helping you prepare for the interview
- post interview follow up
- advise you on giving notice
- sharing information about the hiring firm
- and otherwise promote your best interests.

If you have a written agency agreement, the agent can also help you negotiate a desirable starting salary and lay out your career path with the hiring firm.

A talent agent can be compensated in different ways. For example, you can pay the agent out of your own pocket. Or the agent may seek compensation from the listing agent or hiring firm, but require you to pay if the listing agent refuses. (*Most recruiting services in today's market are paid for by the hiring firm.*) Whatever the case, be sure your compensation arrangement with your talent agent is spelled out in a talent agency agreement before you agree to a disclosure of your resume and that you carefully read and understand the compensation provision.

Dual Agent

You may permit an agent or firm to represent you and the seller at the same time. (*Most recruiting services in today's market fall under this category.*) This “dual agency relationship” is most likely to happen if you become interested in a position listed with your talent agent or the agent’s firm. If this occurs and you have not already agreed to a dual agency relationship in your (written or oral) talent agency agreement, your talent agent will ask you to amend the talent agency agreement or sign a separate agreement or document permitting him or her to act as agent for both you and the hiring firm. It may be difficult for a dual agent to advance the interests of both the talent and hiring firm. Nevertheless, a dual agent must treat candidates and hiring firms fairly and equally.

Although the dual agent owes them the same duties, candidates and hiring firms can prohibit dual agents from divulging certain confidential information about them to the other party. Some firms also offer a form of dual agency called “designated dual agency” where one agent in the firm represents the hiring firm and another agent represents the talent. This option (when available) may allow each “designated agent” to more fully represent each party. If you choose the “dual agency” option, remember that since a dual agent’s loyalty is divided between parties with competing interests, it is especially important that you have a clear understanding of

- what your relationship is with the dual agent
- and what the agent will be doing for you in the transaction.

This can best be accomplished by putting the agreement in writing at the earliest possible time.

Listing Agent Working With a Candidate

If the executive search agent or firm that you contact does not offer talent agency or you do not want them to act as your talent agent, you can still work with the firm and its agents. However, they will be acting as the listing agent (or “subagent”). The agent can still help you find positions, set up interviews, and provide many of the same services as a talent agent. The agent must be fair with you and provide any non confidential information about the hiring firm and open position.

But remember, the agent represents the hiring firm—not you—and therefore must try to obtain for the hiring firm the best possible results. Furthermore, a listing agent is required to give the hiring firm any information about you (even personal, financial or confidential information) that would help the hiring firm choose a candidate and write an offer.

Agents must tell you if they are listing agents before you say anything that can help the hiring firm. But until you are sure that an agent is not a listing agent, you should avoid saying anything you do not want a hiring firm to know.