

WHEN DOES A REALTOR EARN A COMMISSION?

The standard used in determining if a real estate agent has earned a commission is whether or not they are the "effective cause" of the ultimate sale. If the agent finds the person who does, in fact, purchase the property then they are normally entitled to the commission. This is so even though the sale may have been at a different price or after a substantial interval of time.

The relationship between the vendor and the realtor is usually governed by the terms of the listing agreement. The standard MLS Listing Agreement used in the Fraser Valley cites four circumstances in which a commission is earned as follows:

- (a) a binding contract of sale being entered into during the listing period;
- (b) a binding contract of sale being entered into at any time in respect of which the realtor's efforts were the "effective cause" of the sale;
- (c) a binding contract of sale being entered into during the listing period, whether or not the realtor was the effective cause; or
- (d) the realtor finds a purchaser who is ready, willing and able to enter a binding contract of sale

The first scenario (a) is obvious and accounts for most transactions. The agent brings buyer and seller together, property changes hands and the realtor is paid the commission.

The second scenario (b) deals with the situation of the sneaky vendor who is introduced to a prospective purchaser during the term of the agreement, waits until the listing agreement expires, then sells the property to the same purchaser. It can also happen when the vendor waits for the listing to expire, lists with another real estate agency (often for a reduced commission) and then sells the property to a purchaser that the prior realtor introduced to the property during the currency of the prior listing agreement.

The third situation (c) generally occurs when the vendor sells the subject matter of the listing agreement during the listing period to a purchaser who is not introduced to the property by a realtor. The fourth situation (d) occurs when the realtor finds a prospective purchaser who offers to pay the full list price but the vendor refuses to sell.

This final situation usually only occurs in a fast rising market with a vendor who is near the end of a relatively lengthy listing agreement. It doesn't crop up too much in practice as it requires a purchaser who is willing to go through a lot of hassles, including tendering the actual monies equivalent to the asking price, and that, of course, doesn't happen too often unless the property actually experiences a serious increase in value.

If you are selling your property pursuant to the terms of a listing agreement you should definitely read and understand what you are signing so you know where you stand. If you try to stiff a realtor for an earned commission, that realtor will probably head straight for their lawyer's office. Then you've got real trouble.

Their lawyer will likely have a number of powerful options immediately available including suing you, registering a caveat or a certificate of pending litigation against the title to prevent the title passing (or at least gumming up the works a bit), seeking an order for garnishee before

judgment, obtaining a Mareva injunction or other such similar remedies.

Many people tend to view the real estate commission as being exorbitant and the realtor as overpaid. What they often fail to realize, however, is that their property probably would not have sold by itself. Someone had to go out, find the purchaser, put buyer and seller together and then write up a binding agreement.

While it is true that realtors are usually overpaid for the one deal in ten that goes through, it should also be remembered that they pay for the advertising and waste their time on the other nine deals that fall apart or never come together in the first place.