

Douglas S. Tingvall

Attorney at Law

8310 154th Ave SE

Newcastle WA 98059-9222

425-255-9500/Fax 425-255-9964

RE-LAW@comcast.net



www.RE-LAW.com

“For Sale by Owner” in the 21st Century: Do Sellers Still Need Real Estate Brokers?

The internet has revolutionized the real estate business. Consumers now have direct access to resources and information that previously were available only to real estate brokers. So, do sellers still need real estate brokers? In true lawyer fashion, my answer is “it depends.” Access to the multiple listing service [“MLS”] is still essential to effectively market most properties and the MLS is controlled by the real estate industry¹. Hiring a real estate broker used to be an “all or nothing” proposition. But, today sellers have a range of options to gain access to the MLS – from traditional full service, full commission brokers to progressive limited service, flat fee or discount brokers. As the label suggests, limited service brokers typically provide reduced services to sellers, such as assisting the sellers in establishing an asking price, creating ads and flyers, installing “for sale” signs, furnishing forms (*e.g.*, seller disclosure statement, purchase and sale agreement, and addenda), placing an MLS keybox on the home, and most importantly, publishing the listing in the MLS. Limited service brokers typically do not actively market the home beyond publishing the listing in the MLS, do not hold public or brokers open houses, do not handle negotiations and do not monitor the transaction through closing, as do full service brokers. In exchange, limited service brokers charge a lower listing firm commission (usually a flat dollar amount or small percentage of the sales price, such as \$500 or 0.5% to 1% of the sales price). The seller still offers a full selling firm commission to any other member of the MLS who procures a buyer (usually 2.5% to 3.5%). For many sellers, using a limited service broker is the best of both worlds. Sellers get the benefits of market exposure through the MLS and capture both buyers who are working with brokers and those who are not, while saving nearly half of the traditional full commission. Whether a seller should retain a full service broker depends on a number of factors, including:

- Does the seller live in the home or at least in the area?
- Does the seller have the time and flexibility to handle showings?
- How experienced and sophisticated is the seller in handling real estate transactions?
- Is the seller competent to handle the negotiations?

¹ At the time of this writing, there is no comparable substitute to the MLS available to consumers directly. Of course, that too could change.

This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.

-
-
- Does the seller have available reliable resources, such as a real estate attorney, mortgage broker, inspector, contractor, surveyor, etc.?

If the seller can answer all of the above questions “yes,” then the seller may not need a full service broker and may be served adequately by a limited service broker.

Caveat #1: Sellers who use limited service brokers should understand that they are unrepresented in dealing with buyers and their agents. Unrepresented sellers often make the mistake of looking to the selling broker for advice. Although the selling broker is required by law to deal honestly and in good faith with all parties, the selling broker almost always represents the buyers and is not allowed to take any action or give any advice that is adverse or detrimental to the buyers’ interest in the transaction. The buyers’ agent owes no duty of confidentiality to the sellers and is not even required to advise the sellers to seek expert advice on matters beyond the sellers’ expertise.

Caveat #2: Selling a home can be a complicated process and is fraught with pitfalls. Full service brokers generally are qualified to address most of the common legal issues that arise. But, sellers who use limited service brokers should consult a competent real estate attorney for advice and counsel on the legal aspects of the transaction. Some lawyers who offer assistance to home sellers charge a flat fee of as high as \$5,000 for their services. Such flat fees are nearly always exorbitant, unfair and structured to compensate for more difficult and time-consuming deals. I charge an hourly rate, plus expenses. Sellers pay only for services actually rendered.

So, my answer to the question “Do sellers still need real estate brokers?” is that most sellers today should use a limited service broker *and* a real estate attorney, while other sellers need a full service broker. Unless the sellers already have their buyers in hand, I recommend using at least a limited service broker and not flying solo.

By day, Doug Tingvall is a real estate attorney and voice-over talent. By night, he sings in light operas and musicals.



This article contains general information only, and should not be used or relied upon as a substitute for competent legal advice in specific situations.