
COMMISSIONS

Question: We have had two incidences in two days of listing agents (where we represent the buyer and are presenting an offer to purchase) not having put "sold contingent" in the MLS and not telling our sales associates about the previously accepted contingent offer until their purchase and sale agreement was accepted by the seller and the transaction was fully executed, without any reference to the previous offer or being subject to its rescission. In both instances, the sales associate came to me to ask me what to do because the listing agent told them they had to "wait" while they bumped the previous contingent offer. My response to both was that their buyers most likely have an enforceable purchase and sale agreement and that the sellers in each case had sold their homes twice. Could you give me some guidance as to what we ought to tell our purchasers? My inclination is to say, if they really, really want the home, that they could pursue this with the seller. But the first purchaser could do the same and we'd be in a mess. Our clients are under no obligation to modify an agreed upon and mutually accepted purchase and sale agreement. The listing agents want us to "add" the bump clauses at this point. I'm inclined to tell our clients they don't have to.

There's also the problem of our agents not being able to earn their commission if the sale doesn't go together, after being duped by the listing agent with these tactics. The MLS strictly prohibits properties being listed as "available" when actually "sold contingent" for this very reason. Can we take these listing agents to arbitration for our sales commissions?

Answer: You are correct on all counts!

Question: At the seller's request, I cancelled a listing. The seller then listed with another broker the same day. The next day the property sold to a buyer obtained through the MLS. Do we have any recourse for a commission?

Answer: If you cancelled the listing, then we have no rights, unless we can prove that the seller obtained the cancellation through fraud. It is against Company Policy to cancel a listing, unless we do so as part of a settlement of a potential claim against us. In the future, merely take the property temporarily off the market or use a release of listing form, but only if the sellers reimburse you for your expenses.

Question: If a Seller dies after a purchase and sale agreement is signed, but prior to closing, is the contract still binding on the seller's heirs? If an agent has a Listing Agreement with a Seller who dies prior to accepting any offer, is the Listing binding on the heirs?

Answer: Because a listing agreement is a personal services contract, it is not binding on the seller's estate or heirs, if the seller dies before the broker has performed. However, a purchase and sale agreement is binding on the seller's estate and heirs.

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