

Eliminating Bidding Wars!



By Brian Madigan LL.B.

Do you think that real estate agents could stop bidding wars? They might if they just decided to charge the commissions to which they are entitled.

Remember the four scenarios that we looked at the other day. In the last case, the agent was entitled to double dip and charge two commissions for just one sale.

You might think that to be unfair. You might also think that there must be some way to defend against such a claim.

However, I'm just reporting and commenting on the actual wording contained in the agreement. I didn't make it up, and it's not my document. It is nevertheless the specific document that is used in 99% of all real estate deals in Ontario. So, it's worth talking about, and having some idea what it says.

So. Let me cite that commission clause once again:

"COMMISSION: *In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of.....% of the sale price of the Property for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period and on the terms and conditions set out in this Agreement **OR** such other terms and conditions as the Seller may accept."*

Here is the paragraph dealing with commission entitlement everyday English:

I agree to pay you a commission of "x" % of the sale price of the property for,

- 1) a valid **Offer** in accordance with the listing agreement, **or**
- 2) an **agreement** that I find acceptable.

So, any full price Offer on the terms and conditions set out in the listing will do. That's enough, the seller doesn't have to accept it. But, accept it or not, the agent has earned his commission.

Now, we come to the second part, and this is the agreement. If the seller accepts

an agreement, then once again, the commission is earned. The deal doesn't have to close. If it does, that's nice. But, just the same the commission is earned.

When you look at the criteria for commission entitlement, you will see that the two requirements are “**either/or**”, not both. So, the Offer or the agreement!

Remember our four scenarios:

Scenario #1 No Commission

Bob the real estate agent lists Paul's property for \$349,000. A prospective purchaser, Peter calls Bob and puts in an Offer at \$345,000.

Sure Peter put in an Offer, but it wasn't good enough. It was only \$345,000, so, no commission.

Scenario #2 Commission Payable

The same as #1 except Paul accepts the offer.

This is a little different, it wasn't the full asking price but Paul agreed to accept the offer and enter into an agreement, so under part 2 of the requirements, this is sufficient, the commission is payable.

Scenario #3 Commission Payable

Here, Peter puts in an Offer through Bob at \$349,000 with all Paul's conditions. Paul decides not to sell, so he refuses to accept it.

This is the full price offer, so we have to go back to part 1 of the commission entitlement clause. Full price and the required conditions are sufficient to satisfy the clause. The agent gets the commission.

Scenario #4 Double Commission

At this point, Peter puts in an Offer through Bob at \$349,000 with all Paul's conditions. This time Paul decides to accept it.

This is the accepted full price Offer. This deal qualifies for a commission under both parts 1 and 2. It was a full price Offer with all the requested conditions and so there is a payment of commission under this part. Also, it was an accepted agreement of purchase and sale, so there's a commission payable to the agent here too.

The above summarizes the commission entitlement provisions under the standard listing agreement. So, you are going to say under Scenario #4, what real

estate agent is going to charge twice? That's not fair!

Well, how about an agent who brought a full price Offer and didn't get the deal?

So, this time it will be a little more complicated. Bob decides that a bidding war is the best way to create interest in Paul's property. Paul purchased it two years ago for \$299,000 and he did about \$10,000 in renovations.

Bob is rather clever and he knows that other agents will be very excited when he lists the property at \$297,500. He knows they will check to see what Paul paid for the property. He will mention the \$10,000 in renovations. And, he will say showings this weekend and no offers until Wednesday of next week.

So, Bob's orchestrated bidding war is set in motion.

Mary, June, Rose, Thelma and Louise all bring in Offers from their clients.

Mary

Mary brings in an Offer at \$295,000. We know the result. The offer was not accepted. There is no commission.

June

June brings in an Offer, This is full price at \$297,500, closing on the date specified and with all the vendor's conditions. So, there is one commission here.

Rose

Rose brings in a better offer, this one at \$345,000. Another commission here!

Thelma

Thelma knowing of a bidding war, does her homework and comes up with a \$349,000 bid. One more commission earned.

Louise

Louise is very clever, and seeing all those cars sitting out on the street awaiting their fate, offers \$370,000. This Offer is accepted and qualifies for payment of a commission under both parts 1 and 2.

But, this is real life, so Louise is happy enough with one commission. However, Mary, June, Rose and Thelma all feel like Bob has taken advantage of them. A total waste of their clients' time and money, all to no avail.

So, they decide to show Bob a lesson and claim their one half portion of the

commission entitlement.

Total Commissions

For argument sake, we'll assume a 5% commission with one half or 2.5% going to the selling agent.

Mary \$0
June \$7,437
Rose \$8,625
Thelma \$8,725
Louise \$9,250

And, don't forget about another \$9,250 to Bob for all his hard work getting that bidding war going.

Paul actually expected to pay Bob and Louise \$18,500 in commissions, but he really wasn't counting on another \$24,787 in extra bonus commissions just for the bidding war.

June, Rose and Thelma all decide to sue for their commissions. After all, look at the good price that Paul got. And, it was really due to their efforts (and Mary who has no claim) and so..... they should be paid. They did all kinds of work, which resulted in the higher price, so it's only fair. If you are going to have six agents work on the deal maybe they all should be paid? Or at least 5 of them.

You have to admit, that it seems quite sensible.

Do you think that this would be a good way to end bidding wars?

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty
905-796-8888
www.OntarioRealEstateSource.com*