



## Don't Sign the Standard Listing!

*By Brian Madigan*

Read it first, then decide. It would be reasonable to have some idea of what is set out the basic listing agreement commonly used in Ontario. Based on the number of disputes that arise and the questions that are asked you would think that nobody reads it, they just sign it.

Here are some recent comments that I have heard:

- I didn't think that I owed a commission after the agreement expired.
- I didn't realize that I owed a commission if I rented the premises.
- I was really shocked to find out that I owed a commission to the agent when I rented my house to my sister.
- If I decide not to complete an agreement of purchase and sale, I thought that I would not owe any commission.
- I didn't realize that I had to pay GST on the commission.
- I didn't think that my agent should be giving and receiving notices pursuant to the agreement of purchase and sale, I thought that I would do that myself.
- I never received any written documentation about agency; can I cancel the listing.
- I was surprised that my agent seemed to be working for the purchaser.
- My neighbour said he would buy my house, I told him to wait until after the listing expired, so he could save the commission.
- Why do I have to have a "sold" sign on my property; that's my own business.
- Why should I have to tell the agent about my mortgage; that's between me and my bank.
- I thought the agent would be responsible if anything was stolen from my house.
- I was quite surprised that the agent's assistant claimed to have a power of attorney from me when dealing with my bank to obtain information about my mortgage.
- I didn't know that my heirs would be bound by the listing agreement.
- I thought I could cancel the agreement anytime I wished.

All of these things may come as a surprise, but they are all true. However, the good news is that they don't necessarily have to be. If you want to make a change, you'll have to amend the listing agreement. If you don't make any changes, then all of those items will apply to you.

So, first things first! You'll have to read the agreement, otherwise you won't know where to make any changes. Some of the standard provisions are quite reasonable and others are not. Which ones should you change? Which ones will your agent be concerned about? So, let's go through the agreement and see which ones we should amend and which ones we should keep.

### *90 Day Holdover Period*

This is a standard arrangement. Your agent will receive a commission if they introduce the buyer to the property during the listing agreement. The holding period starts right after the listing expires. If the buyer submits an Offer within 90 days after the expiration of the listing, your agent will still receive a commission.

### *Rental Commission*

If your house is for sale, then that's the deal. If it gets sold, you owe a commission but why should you pay if you become desperate and have to rent it. If it is both for sale and for rent, make sure this is specified clearly. If it's just "for-sale", delete all references to the lease of the property.

### *Failure to Complete*

If you fail to complete a valid agreement of purchase and sale, you're in breach of that agreement. Also, you still owe the commission. However, if the buyer fails to complete the purchase, you don't owe any commission unless and until the buyer does complete the transaction or is forced by the Court to do so.

### *Payment of GST*

There's GST on just about everything including real estate commission.

### *Appointment of Agency*

In most cases, the appointment of your real estate agent for the purpose of “giving and receiving notices” will be fine. However, if this is a more complicated commercial transaction, you might want to re-consider and limit this authority to your solicitor.

### *Agency Documentation*

The listing agreement says that “the listing broker has provided me with information regarding agency relationships, including information on Seller Agency, Sub-Agency, Buyer-Agency, Dual-Agency and Customer Service”. Well, that’s four separate agency relationships and one non-agency relationship. It’s confusing, so you should definitely have something that’s in writing and easy to understand. The Ontario Real Estate Association has produced a document entitled “Working With A Realtor”. This document provides a rather brief and cursory minimalist explanation. Your own agent should provide you with a much better explanation, and one that should satisfy your requirements.

There is nothing that requires the information to be in writing. It could be verbal. But, it should be in writing and if it’s not, it could give rise to your right to cancel the listing agreement prior to expiration.

### *Your Agent Working for the Purchaser*

Now, if this is a surprise, you really didn’t pay attention to the agency explanation. In fact, the listing agreement said you agreed to have your agent act for the purchaser. You agreed that your own agent would then have to provide information to the purchaser about you, in fact information that you thought was confidential. That doesn’t make a whole lot of sense! So, why agree to that? And, furthermore, why agree in advance? Why not wait and see?

### *Your Neighbour Wants Your House*

During the listing, you are obligated to refer all inquiries to your agent. If you fail to do so, you are in breach of contract. If you fail to disclose this information, you may be liable for a commission, not just during the 90 day holdover period, but afterwards as well. So, keep up your part of the bargain.

### *Sold Sign*

If you don't want a "sold" sign, then say so. Amend the agreement. Your agent would like to have the opportunity to market this achievement. It doesn't help you any, but it would be helpful to your agent, and it's a reasonable provision. If it's a long closing, perhaps limit the sign to 4 weeks, that should be long enough.

### *Stolen Merchandise*

Your agent is not responsible if anything is stolen. This is reasonable enough. They cannot make guarantees and they really can't insure your property. So, the cheaper arrangement is to agree that your agent is not responsible except in the case of negligence. However, the listing agreement says "gross negligence". This is not necessary. Delete the word "gross", then the provision is reasonable.

### *Disclosure*

The agreement requires you to disclose anything that might affect the sale, including title issues, mortgages, easements and the like. This is quite reasonable. The agent has to be sufficiently informed in order to market your property appropriately.

### *Power of Attorney*

This is crazy! This is just way over the top, and it's completely unnecessary. It is absolutely unreasonable for any agent to seek to have you grant a power of attorney either in their favour or anyone else at their firm. The person exercising your authority may not even be registered under the Real Estate and Business Brokers Act. Why would you sign this? Why not just contact the bank yourself? Well, maybe you missed the clause because it was contained in a paragraph entitled "Verification of Information". That seemed innocuous enough. But, did your agent tell you that you were signing a power of attorney? Actually, your agent should just delete this clause before it is presented to you for your signature. And, if they don't, just strike it out.

### *Binding Agreement*

This agreement like most agreements will also be binding on your heirs. If your demise prior to the expiration of the listing would change things, for example your estate might become the beneficiary of an insurance policy, then you might want to amend this provision somewhat to reflect that matter. Generally, it is reasonable and it should remain.

### *Cancellation Prior to Expiration*

A listing agreement is enforceable throughout its duration. It cannot be cancelled just because you have changed your mind. If the agent agrees, then of course, it can be cancelled, but you have no automatic right to cancel prior to expiry. If there are to be any special cancellation arrangements, then you should specify those in writing.

So, just like any legal document, read it carefully and make sure you understand it before you sign.

*Brian Madigan LL.B., Realtor is an author and commentator on real estate matters, Coldwell Banker Innovators Realty, Brokerage 905-796-8888, BRMadigan@rogers.com or visit [www.OntarioRealEstateSource.com](http://www.OntarioRealEstateSource.com)*