

Don't Pay Double Commissions!



By **Brian Madigan LL.B.**

Why would a seller want to pay double the real estate commission? And, why would a seller want to pay an agent who didn't sell the property?

Actually, it could easily be triple the commission or more. Really, there's no limit, until the seller runs out of money.

The concern is the standard listing agreement commonly used throughout the Province. In all fairness, some brokerages will have their own forms and different terms are often commonplace in commercial practice.

But, let's have a look at the standard agreement that is used in well more than 99% of all cases.

That agreement specifies the parties, identifies the property and sets out the terms upon which the property is to be sold

The paragraph dealing with commission entitlement provides as follows:

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!

I know that you don't want to believe me so here's the paragraph in its entirety. Read it through carefully as many times as you like. And, once you're finished we'll have a look at some examples:

“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.”*

Let’s consider the following situation; 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. That was **scenario #1**.

Scenario #2 is the same except Paul accepts the offer.

In Scenario #3, 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.

In Scenario #4, Peter puts in an Offer through Bob at \$349,000 with all Paul’s conditions. This time Paul decides to accept it.

If we look at the various scenarios and apply the legal wording contained in the listing agreement, we come up with the following:

Scenario #1 No Commission

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

Scenario #2 Commission Payable

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

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

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. So, that great for the agent! Right?

Interesting, eh!

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