

## RECO Discipline: True Copy of Listing

**By Brian Madigan**



Well, this might sound a little on the trivial side, but does a registered sales representative have to provide a true copy of the listing agreement to the seller?

Of course, the answer is “yes”, but Mr. John Smith found out the hard way.

He was dealing with a rather sophisticated client in his busy commercial real estate practice. On this particular occasion, had the client sign a listing agreement. The listing contained a holdover clause. The purpose of this clause was to protect Smith in the event that Smith introduced a potential purchaser to the client and they then decided to await the expiry of the agreement and do business themselves without utilizing Smith as the agent.

Smith carefully explained the clause and proposed to insert “180 days”. The client asked that he have the opportunity to consult with his solicitor, but that would take a day. The following day, he asked for “160 days” and Smith agreed. They were each to make this amendment to their own copies. Smith did, and the client did not.

There is a positive duty upon Smith to provide the client with a true copy of the listing agreement under REBBA, as follows:

### **s. 35 Real Estate and Business Brokers Act**

#### **Agreement to list real estate with broker**

35. (1) Every broker and salesperson shall, immediately after the execution of an agreement to list real estate for sale, exchange, lease or rent with the broker, deliver to the person who has signed the agreement a true copy thereof.

#### **Expiry of agreement**

- (2) An agreement with a broker to list real estate for sale, exchange, lease or rental is not valid,
- (a) If it does not contain a provision that it will expire on a certain date specified therein;
  - (b) if it contains a provision for more than one date on which it may expire; or
  - (c) if a true copy of it is not delivered by the broker or the broker’s salesperson to the other party immediately after its execution.

So, even though the panel drew some unfavourable conclusions about the client and his credibility, it nevertheless had to apply the law.

Smith had failed to send a copy of the listing agreement with the “160 days” provision included in it. Since the Panel was otherwise satisfied with the conduct of Mr. Smith, he was ordered to attend the Real Property Law Course offered by OREA within the ensuing six month period.

Specifically, Smith was found to be in breach of:

### **Rule 23 – Obedience to Law:**

A Member shall practice in accordance with all federal, territorial or provincial law or municipal by-law relevant to the Member’s fitness to practise.

(in particular, the obligation to provide the client with a true copy of the agreement)

### **COMMENT**

Although this a recently reported case, the facts that gave rise to the complaint took place in 2005, and the law that applied was the Real Estate and Business Brokers Act, then in force (that is, prior to REBBA 2002, which came into force in 2006).

By the way, Smith is relatively pleased to get out of the hearing so lightly. RECO’s prosecution had sought a \$12,500 fine as punishment.

### **Recommendations**

- Complete all documentation very, very carefully
- Don’t assume that your client will always cooperate with you
- Remember, no matter how trivial you might think it is, any transgression under the Act or the Code of Ethics is viewed by RECO as “serious”.

***As a rule, I use fictitious names. The actual case is published on RECO’s website and is available to the public. For educational purposes, the names of the parties really don’t have any bearing. If you need to quote the case, you will have to obtain the proper legal citation.***

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