

Real Estate Agent: Early Termination



By **Brian Madigan LL.B.**

What if you have a real estate agent you don't like? How do you get rid of them?

You don't want to be a complainer, you don't want to report them, and you don't want your property "black-listed". So, what do you do?

If you are like most people, you'll do nothing and just wait for the listing to expire. But, that's just "silly". What should you really do?

Let's have a look at the obligations of the real estate agent. According to the *Real Estate and Business Brokers Act*, the agent:

- Loyalty and Obedience
- Best interests and Confidentiality
- Accounting
- Conscientious and Competent service
- Market Knowledge
- Disclosure

These are the basic duties. The question in any set of circumstances is whether the agent is "doing the job". And, like everyone else, the agent can be terminated for poor or inadequate performance.

Listing agreement

Ok, you signed the standard form listing agreement. Now, that's just great, but what services did you buy? If you are only paying a 1% commission with a discount broker, then maybe you are just getting what you "bargained for".

Let's be clear about commissions. The top producers and best agents are not the deep discounters. Brand new agents without experience often charge very little. You generally won't find this elsewhere in the market. However, there are no fixed rates. In fact, both the **Competition Bureau** and the **Real Estate Council of Ontario** (the regulator) want to bring to your attention that there is plenty of competition in the marketplace. That's true from a technical perspective, but are all services the same? You need to know that the best agents don't come "cheap" They won't work for free, unless perhaps you're family.

They need to make a living wage and there's a lot of work involved in properly

marketing a listing. You have to remember that the agent is using their own money for advertising your property, and if there's no deal, then that's simply money down the drain.

Let's assume that you have an agent who is simply doing a poor job of marketing your property. Let me first ask you several questions:

1) Is the listing price fair?

This is a basic and crucial question. If the price is too high, you're not going to get any action, and you're going to be dissatisfied.

2) Has the agent had the property long enough?

Let's give the agent at least two weeks to get started. Sometimes properties derive a lot of attention when the first come on the market. This might be your second agent, so you're under pressure, but provide the agent with at least a two week period to get started with their marketing campaign.

3) Does the agent have enough time left on the listing?

Let's say your listing has one week to go, and you haven't given your agent an indication that you'll renew. Here, the agent may be somewhat reluctant to spend money for advertising only to find that next week, you've turned your property over to a new agent.

Broken Promises

This is really the only reason for terminating a contract early. There has to be a breach of contract. Otherwise, the listing agreement will simply continue like any other contract.

So, let's have a look at the broken promises. First, go back to the listing presentation. Here, it would be helpful, if you had some notes. What did the agent promise you about the following:

- Listing on MLS
- Lawn sign
- Advertising on brokerage website
- Posting on companion websites
- Distribution of "just listed" flyers
- Agent's Open House
- Neighbour's Open House
- Public Open House
- Advertising in local, low circulation newspapers
- Advertising in regional mass circulation newspapers

- Distribution of targeted neighbourhood flyers
- Brochures for Prospective Purchasers

While I'm not suggesting that any of those possible advertising venues necessarily make sense for your property, the question is "what did the agent say to you"? If it was important at the time of the listing presentation to get you to sign on, why is it not important now?

So, you get the sales pitch, the agent promises you the world and then fails to deliver, can you do anything about this? Well, of course you can! There are three **initial steps**:

- 1) contact the agent directly and get a response (you might be quite satisfied),
- 2) contact the brokerage and inquire about switching agents,
- 3) contact your lawyer and proceed with early termination.

Real estate agreements fall under various pieces of legislation including the Statute of Frauds. This simply means that real estate agreements must be completely in writing. Verbal representations don't count. But, that's just the real estate transaction. It doesn't apply to the listing agreement.

Legal Reasons for Early Termination

There are two basic justifications:

- 1) unfair practices, and
- 2) unconscionable representations.

Unfair Practices

Have a look at the **Consumer Protection Act**. The following matters apply to representations by the real estate agent to induce you to sign the listing. Here is the list of applicable **unfair practices** (often referred to as false, misleading or deceptive representations) under the Act:

1. A representation that the services have sponsorship, approval, performance characteristics, benefits or qualities they do not have.
2. A representation that the person who is to supply services has sponsorship, approval, status, affiliation or connection the person does not have.
3. A representation that the services are of a particular standard, quality, grade, if they are not.
4. A representation that the services are available for a reason that does not exist.

5. A representation that the services have been supplied in accordance with a previous representation, if they have not.
6. A representation that the services or any part of them are available or can be delivered or performed when the person making the representation knows or ought to know they are not available or cannot be delivered or performed.
7. A representation that the services or any part of them will be available or can be delivered or performed by a specified time when the person making the representation knows or ought to know they will not be available or cannot be delivered or performed by the specified time.
8. A representation that a service, is needed or advisable, if it is not.
9. A representation that a specific price advantage exists, if it does not.
10. A representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the agreement.
11. A representation that the transaction involves or does not involve rights, remedies or obligations if the representation is false, misleading or deceptive.
12. A representation using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if such use or failure deceives or tends to deceive.
13. A representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
14. A representation that misrepresents the purpose of any charge or proposed charge.
15. A representation that misrepresents or exaggerates the benefits that are likely to flow to a consumer if the consumer helps a person obtain new or potential customers.

Unconscionable Representations

In addition, there is also a prohibition against unconscionable representations, which include the following;

1. that the consumer is not reasonably able to protect his or her interests because of disability, ignorance, illiteracy, inability to understand the language of an agreement or similar factors;
2. that the price grossly exceeds the price at which similar goods or services are readily available to like consumers;

3. that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
4. that there is no reasonable probability of payment of the obligation in full by the consumer;
5. that the consumer transaction is excessively one-sided in favour of someone other than the consumer;
6. that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
7. that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; or
8. that the consumer is being subjected to undue pressure to enter into a consumer transaction.

Conclusion

Any one of the above ought to be sufficient to enable you to terminate early. A consumer is provided with the right under the Act to rescind the agreement. And that right is in addition to any other rights (ie. damages). That is basically a laundry list of 23 separate items. Surely, if you are so displeased, there must be something on that list!

So, if you have an agent who has “over-promised” and “under-delivered”, you are not without a remedy. Cancel the listing, and move on!

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