

LAW REVIEW

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REAL ESTATE BROKER GETS THE COMMISSION

All of you real estate agents know about listing agreements. Here is a new case about a buyer's broker agreement, where the buyer engages a broker to find real estate to buy.

Buyer Broker Contract

Jack Winick and his two sons own CCLG, a real estate investment company. In 2002, CCLG devised a strategy to purchase condominiums in downtown San Diego before they were constructed on speculation they would substantially appreciate due to one-to two-year escrow periods. Winick and CCLG were expecting lucrative profits. Those were the days.

CCLG signed a California Association of Realtors' (CAR) standard form buyer broker contract with Prudential and Re-Max to purchase condominiums in Renaissance, Pacific Terrace and Park Place developments. You can tell by the names they were high-end. Winick and CCLG signed contracts to purchase eight units at Park place, six units at Renaissance and three at Pacific Terrace.

Unbeknownst to everyone else, Winick did not intend to close and pay commissions on units that did not appreciate dramatically.

Flat Market

Later in the year when real estate prices had not appreciated, Winick and CCLG notified their brokers that they would not be closing on the condominium contracts and would not be paying commissions. Some of the brokers initiated mediation under the CAR purchase contract but Winick refused to participate.

The sellers wanted to keep CCLG's deposits under the liquidated damages clause in the CAR contract, but Winick "made it known he was a lawyer and dealing with him was difficult". I find that totally disgusting. Because of Winick's threats of litigation, the condominium sellers returned CCLG's deposits.

Suit for Commissions

Prudential and Re-Max sued CCLG for commissions. Right on. Winick's and CCLG's defense was that commissions were not earned because the escrows did not close. Sorry Charlie.

The trial court awarded over \$150,000 in commissions plus over \$75,000 in attorneys fees.

Winick and CCLG appealed, which on its face is patently ridiculous.

Under the buyer broker contract signed by CCLG with their brokers, commissions are payable at close of escrow or "the buyer's default". The Court of Appeal promptly and correctly concluded that CCLG's failure to close constituted a default, thus the commissions were earned.

Usual Listing Agreement

The CAR listing agreement (seller's broker) is much more common than the buyer broker contract, but similar in every respect.

When the seller signs a listing agreement with a broker, the commission is earned when the broker procures a ready, willing and able buyer who offers to purchase the property on the listing terms or terms acceptable to the seller.

Under a listing agreement, the broker's commission is earned, and here's where the listing agreement is similar to the buyer broker contract, if the seller withdraws the property from sale or makes it unmarketable during the listing period. You would be surprised how many owners sign listing agreements and then take the property off the market during the listing period. Sometimes listing brokers are fine with that, sometimes they are not.

As Winick and CCLG found, never assume you can simply ignore a buyer broker contract or a listing agreement.

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