

## WHO PICKS UP THE TAB?

By Judith I. Johannsen

There are two constants in every real estate transaction – both buyers and sellers want the best possible purchase price and terms for themselves and neither wants to pay a real estate broker's commission.

When it comes to compensation to real estate companies, there is no "standard" or "usual" commission. The amount of compensation is negotiable and can be paid by the seller or the buyer and the answer to who is responsible for paying the compensation depends upon the transaction and the agreements the buyer and seller make with their real estate companies.

In CT, listing agreements must include a compensation paragraph, stating the negotiated amount of compensation the seller pays the broker when the property sells. The compensation can be a flat fee, a percentage of the selling price, or some other agreed-to form of payment.

When a property is entered into the Multiple Listing Service ("MLS"), the listing broker makes a blanket offer of compensation to any real estate company that brings a buyer to closing, and when the property closes, the buyer's broker earns the compensation offered and that is what the listing broker is obligated to pay.

At closing, the attorney gives the seller a check representing the sale price of the property, minus closing costs and recording fees. If the property sells through the efforts of a real estate company (or companies), the attorney also disburses commission checks to the listing broker and, if applicable, the buyer's broker.

Years ago, a listing broker would receive and then deposit the seller's commission check and wait for it to clear before writing a check to the cooperating broker, but today, closing attorneys disburse both commission checks at closing as an accommodation.

Buyer representation agreements also must include a compensation paragraph. Most buyer agreements state that the buyer is responsible for the commission, but the real estate company will look first to collect compensation from the listing broker or the seller. However, where there is no listing agreement (and therefore no listing broker) and the seller is a For Sale By Owner ("FSBO") and unwilling to pay a commission, the only recourse left is to collect the commission from the buyer.

Another instance in which a buyer could be obligated to pay a real estate commission is where a buyer signs an exclusive right to be represented agreement with Company A, but, on the sly, signs another exclusive buyer representation agreement with Company B and then buys a property through Company B while his agreement with Company A is still in effect.

Such a purchase can end up costing the buyer more than the buyer budgeted. Here's why - Company A cannot request compensation from the listing broker for the property the buyer bought because Company A was not involved with the listing broker for that transaction or with a FSBO seller. Company A can, however, demand compensation from the buyer pursuant to their exclusive right to represent buyer agreement.

Because no one ever wants to pay more than necessary in a real estate transaction, every prospective buyer and seller should pay particular attention to the compensation paragraph in his or her representation agreement to understand if there's an obligation to pay a commission to a real estate brokerage company and the circumstances that trigger payment.

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