

Negotiate your listing agreement before you sign on the dotted line

by Ilyce_Glink

We have signed a 30-day contract with a Realtor to sell our home in Maryland. If, after the 30 days are up, someone contacts us to purchase our home, do we owe the Realtor any fees? Is there any sort of "grace period" for the Realtor? I'd like to think that most home sellers read through their listing agreement before signing it. But whether it's listing agreements, loan papers, or even a buyer's contract for purchase, it appears that many consumers aren't taking the time to go through these documents and understand what they're signing. When it comes to a listing agreement, the contract isn't usually that long. But you have to understand what you're signing. You also need to know that if you don't like the way something reads in a listing agreement, the time to speak up is before you sign. Once you sign, the broker has no incentive to negotiate. If you sign a blank listing agreement without reading it, you're opening up a huge can of worms. If reading through a four-page listing agreement seems like too much trouble, here's a short list of key issues you need to know. You'll want to retain the right to:

- Keep your property on the market. Some listing agreements require you to keep your home on the market for the entire duration of the contract. So if you sign a 365-day contract, and decide on day 35 to pull your home off the market, you may not be able to do that. You'll have to wait out the entire 365 days. Since circumstances can change, you'll want the right to yank your house off the market when you want, not when the contract says you can.
- Switch brokers and not pay a double commission. When you hire a real estate agent, it's like getting into a short-term marriage. Sometimes it works and sometimes it doesn't. If it doesn't, you want the right to switch from your broker to another one and not pay a double commission.
- Pay commission only out of the closing proceeds. When I took my real estate license classes, I learned that I earned my commission if I brought a "ready, willing, and able" buyer to the table. So if you list your home for \$300,000 and I bring someone to the table with a \$300,000 offer, I've technically earned my commission. As a seller, you want to make sure you don't pay that commission until the deal closes. Make sure your listing agreement states that the commission will only be paid out of the closing proceeds.
- Terminate the agreement. Even if things are good between you and your agent, you'll want the right to terminate the agreement on your timetable, not the agent's. The best way to terminate is on written notice, so be sure your that listing agreement includes a fax number, address, or an e-mail address where you can send your termination letter, and that you set forth the conditions upon which you can elect to terminate the agreement.
- Not pay a commission six months after termination. Let's say an agent lists your property for 90 days. During the 90 days, someone sees it and likes it, but doesn't make an offer. The listing agreement ends and you decide to pull the property off the market. The buyer who saw it while it was listed comes back and wants to buy it three months after you've pulled your listing. You and the buyer agree on a price. Do you owe a commission? It depends on what your listing agreement says. Some brokers try to collect on the commission in this kind of scenario for up to a year after the listing agreement is cancelled. The smart move is to limit the payment of a commission to 90 or 120 days after the listing agreement is cancelled.
- Not pay a commission if certain specified buyers purchase your property. If you want to sell, and you think Aunt Harriet might want to buy your property, but you and Aunt Harriet don't come to an agreement before it's time to list your property, you can ask to exclude certain named individuals in your listing agreement. If any of these named individuals winds up buying your property, even if it is listed, you won't have to pay the agent a full commission (or perhaps any commission at all). But this has to be specified before the property goes on the market, and some agents will limit the number of exceptions you list as well as the time period in which this applies. Remember, most real estate agents aren't attorneys. If you ask your listing agent to explain to you the information in the listing agreement, you're asking your real estate agent to take on an attorney's role. In some states, this is illegal. Agents cannot explain legal contracts to buyers and sellers. If you don't understand your listing agreement, or can't figure out a way to negotiate the finer points of the contract, please hire an attorney to help you structure the agreement so that you're adequately protected.

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