

Oral agreements about buying, selling homes generally not binding

by Ilyce_Glink

Q: I am in the process of purchasing a condo conversion close to where I live. I have done all the research about purchasing a condo and have decided that it is a good time to buy. I made an oral agreement with a real estate agent to hire her as my referral agent under one condition. Out of the broker commission from the builder, she would be paid \$1,000 and the rest of the commission would be credited back to us since she didn't provide any other services other than signing the builder's referral sheet. We do not have a written agreement. She now wants to back out of our arrangement and keep the entire commission for herself. I was wondering if we have a way to enforce our oral agreement. What kind of evidence can we use to prove the case? We have exchange e-mails about the fee issue but no signature from her. To my understanding of real estate law, an oral agreement is also an effective agreement. The commission distribution is negotiable between buyer, seller and broker because the broker fee ultimately comes from the pocket of buyers. Thank you very much for your advice.

A: The agreement between you and your broker might not fall under the category of "real estate law." In general, oral agreements about buying and selling homes are typically unenforceable. These kinds of agreements must be in writing. For real estate legal advice, you'll need to talk to an attorney. Your dispute concerns your agreement about what services would be performed for what fee. If there is enough information via e-mail that you can establish that the broker agreed to the split of the fees as described by you, you may have enough to hold the broker. You should speak with an attorney who can tell you whether your "oral" agreement is binding in the state in which you live, and whether the e-mail correspondence is enough to prove your case. That said, whether or not the agreement is binding doesn't matter much. You have an agent who isn't willing to help you out and isn't willing to live up to the arrangement you've outlined. By the time this case gets litigated, you'll have closed on your condo. You'll spend thousands of dollars and all kinds of time embroiled in a fight you might not win. I think you should have a conversation with the managing broker and your so-called agent and see what they say. Depending on how that conversation goes, you can decide whether you want to bring in an attorney or chalk it up to being a little naive about how easily an agent would let go of a commission in a slowing market. You also have the option to file a complaint against the broker with the agency that regulates brokers in the state in which you live and, although this won't have much of an effect, with the National Association of Realtors ethics committee (if your agent is a Realtor). There are several new services that offer to rebate part of the buyer broker's share of the commission. One of them, BuySide Realty (www.buysiderealty.com), rebates 75 percent of the buyer broker's commission. (It is not available in every state.) For those buyers who do all of the work themselves, these services might be helpful.

Q: My boyfriend bought a condo in September, 2006. He was never notified - not even at the closing - that no pets were allowed. I have a very quiet, friendly dog and was spending the night about 6 nights a week. He was recently notified by the condo association that there is a bylaw stating no pets are allowed in the building. Apparently, at the last condo board association meeting, the board voted to charge any owner a \$25 per day fee for boarding or having a pet. We have not stayed at the condo since then and now he wants to move to a place that permits pets. Seeing as how he owned the condo for less than two years, will he have to pay capital gains should he make a profit?

A: Typically, condo owners must provide a buyer with the condo declarations and all of the rules and regulations for the property. However in some cases, a buyer has to request the document and the seller is then required to deliver them. Some people receive the documents but never review them. That said, it is up to a buyer to understand the kind of building he or she is moving into. Some buildings are pet friendly while others are not. He should have investigated the building before even putting an offer in to buy the property. Nevertheless, whether he was an informed owner or not, your boyfriend must now abide by the rules, regulations and bylaws that have been passed by the condominium association. It is unfortunate that he discovered the "no pets" policy after he closed. When it comes to taxes, unless your boyfriend is selling because of an illness, divorce, or to take a new job that's 50 miles away from his old job, he may have to pay taxes on any profits earned on the sale of the property. For more details on possible exclusions from this rule, check out IRS Publication 523, "Selling your home." It's available for free at www.irs.gov. © 2007 Real Estate Matters