

DUDE, WHERE'S MY MONEY!



Real Estate Commission Disputes in California

Introduction: There are several ways you can get “shortchanged” following a real estate transaction or undertaking. As examples: 1) you close a deal but your broker short-changes you for one reason or another, 2) you acted as agent for a buyer, submitted an offer, only to have the buyers go behind your back and do the deal, or 3) you represent the seller as listing agent, bring in a qualified buyer who offers full price and the seller fails to go through with the deal. These situations can be very frustrating and time consuming. As real estate is likely your livelihood, these delays and unfair actions can have devastating consequences on your personal financial life. After trying to be nice, writing letters, and being patient in the hopes of receiving what you are owed, you finally have had enough. That’s when its time to speak with a lawyer.

Do I need a written contract to enforce a commission against the Seller or Buyer?

Yes. The Statute of Frauds in California requires agents and brokers to have a signed agreement if they expect a commission.

Is there a standard type of written contract I should have used? No, anything evidencing the agreement, setting forth the commission, and signed by the other party will work. The California Association of Realtors has several different documents that will set forth the agency relationship and commission promises. For example, any of these documents, if properly filled out, should suffice:

AAP	Authorization to Acquire Real Property
BLA	Business Listing Agreement
CA	Commission Agreement
CBC	Cooperating Broker Compensation and Escrow Instruction
EA	Exclusive Agency Listing Agreement (And Right to Sell) / Buyer-Broker Agmt.
LA	Residential Listing Agreement
LCA	Lease/Rental Commission Agreement
LL	Lease Listing Agreement: Exclusive Authorization to Lease or Rent

MHL	Manufactured Housing Listing Agreement
NAP	Non-Exclusive Authorization to Acquire Property
NEA	Non-Exclusive (“Open”) Agency Residential Listing Agreement
NRL	Non-Residential Listing Agreement
PL	Probate Listing Agreement (Probate Advisory attached)
RFA	Referral Fee Agreement
SP	Single Party Compensation Agreement

When a commission is “earned” (Common situations)

- When you have a **listing agreement**, and the deal has closed escrow
- When you have a **listing agreement** and you have procured a buyer “ready, willing, and able to purchase the home (both financially able and legally competent) on price and terms set by seller, or otherwise acceptable to seller (even if the seller backs out, withdraws without notice to you, or cannot deliver marketable title to the buyer, you have a right to your agreed-upon commission unless your agreement specifically states otherwise)
- When you have a **buyer-broker agreement** and the deal has closed (seller must pay the percentage of commission promised in the MLS at the time you showed the property – unless a different agreement was reached and reduced to writing. As buyers agent, you should have printed out the MLS listing while previewing properties)
- When you have a **buyer-broker exclusive agreement** and locate the buyer a particular property, make an offer on that property (whether or not they go through with it with you), and the deal closes with another agent or broker on that particular property.
- A commission can be earned *even after a written agreement expires if*: 1) there was a **“safety clause”** in the agreement, 2) the clause was limited in duration, and 3) if the agent or broker provided the seller with a list of names of potential buyers intended to be protected by the safety clause
- A commission can also be “earned” and due **even after you leave your current real estate office**, BUT ONLY IF your independent contract or associate-licensee agreement so allows. Remember, by law, each broker was required to get one of these signed by you and they are bound to follow it.

AS YOU CAN SEE, THE TERMS OF THE APPLICABLE WRITING WILL DICTATE IF YOU ARE ENTITLED TO RECEIVE COMPENSATION, AND IF SO, TO WHAT AMOUNT. IF THERE IS NO WRITING, DON'T EXPECT ANY EASY WAY TO COMPEL PAYMENT OF ANY COMMISSIONS, EVEN IF YOU FEEL YOU WORKED YOUR BUTT OFF TO GET THE DEAL. **A WRITTEN AGREEMENT SHOULD ALWAYS BE OBTAINED BEFORE YOU START LISTING A SELLERS HOUSE OR BEFORE YOU SUBMIT AN OFFER ON A BUYERS BEHALF.**

NOTE: Licensed **agents and brokers** can agree amongst themselves ORALLY (no writing needed) on how to pay **commissions or referral fees**. This includes agreements with out-of-state realtors to pay referral fees. However, it is always best to get anything relating to commissions in writing. Blame it on your broker if you want, but when it comes to money in real estate, the written documents will save you while oral agreements will bring largely grief.

If you have read this article closely and still have questions, please contact the Law Office of Steve Vondran. **Mr. Vondran is a California licensed attorney and real estate broker.** He is uniquely qualified to assist you in your real estate commission disputes for a low hourly fee, and or a contingency/fee combo. Why not deal with an attorney who understands your issues?

The initial consultation is always FREE



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