

# ARE SELLERS TRYING TO GAME THE SYSTEM?

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**Q**: You recently responded to a question by a seller that wanted to know whether a listing agreement was valid if it had no expiration date and asking whether they could terminate it. They also asked whether they could proceed to sell to a buyer that saw the place during the time the place was listed.

I am a commercial real estate broker, not a residential broker, but I can still translate this for you. Here is their real question:

“We have a buyer (brought to us via the efforts of the broker) who isn’t paying us as much as we would have wanted and we think we have found a way to make it work -- not paying our broker! We are also trying to not pay for legal advice so we are writing you. We noticed that someone forgot to fill in the agreement date and we are wondering if we can void the contract on a technicality and get out of paying the broker.”

Seems to me they likely have a form that says the listing starts on such and such date and expires X days from the “date of the agreement” and that the “date of the agreement” blank was inadvertently left blank (note their reference to “undated”). This doesn’t sound to me like an agent trying to rip someone off with a “forever” agreement given it has a start date.

Their letter doesn’t say we signed this in May and was supposed to be for X days but we realize it has tricky wording and never expires. If it is actually a Realtor agreement (vs agent prepared agreement), it is doubtful



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that it is written to last forever with no ability for them to cancel. Their letter doesn’t say the agent is bad. In fact, the letter says they have a buyer; they want to sell to the person that was brought via the broker and they are worried the agent will (rightfully) sue them over it.

The short answer should have been, “Morally, if you sell to someone brought to you by the agent, the agent should get paid a commission. Legally it depends on the words in your agreement and

your state’s law -- you will need to pay an attorney to tell you if can get away with ripping off the broker. Finally and practically, no, you cannot sell to someone brought to you by the broker before the agreement expired or you made any efforts to terminate it and expect to not pay the pay the broker and not get sued.”

I wish the “wishes of luck” were reserved for the poor agent who has spent money and time marketing their property that they are trying to rip off.

**A**: Thank you for your candid observations. You may be quite right about the motives of that correspondent. You are also right that in just about every case we can think of, the seller of a home would owe a commission to a listing broker where the seller sells the home during the listing agreement or during the protection period after the expiration of the listing agreement.

As we pointed out in our answer to the reader, there are times that some real estate agents overreach and try to have it both ways. They want to tie up the seller to the listing and commission agreement but may not perform as they have promised or try to tie up that seller for a period of time that may be unreasonable.

Your comment about the “missing” date in the document may be the right read. But on the odd chance it isn’t, we have an obligation to cover both sides of that issue. If the document didn’t have a date, the broker may have omitted it or the document may have been drafted improperly.

In either case, if the seller is entitled to terminate the agreement, the next issue is the protection given to the listing broker. As you alluded to, most listing agreements have a protection period that allows that broker to recover a commission if the seller winds up selling the home to a buyer that saw the home during the time the home was listed.

In some markets, real estate agents know that sellers may switch brokers; and when they do, if the seller lists the home with another company, that company will get the commission even if a buyer saw the home during the time the home was listed with the original broker. We appreciate your letter and insights.