

Buyer Agency Contracts: When?

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Major revisions to the Real Estate Licensing and Registration Act (RELRA) took effect in November 1999. The changes introduced the *Consumer Notice* and buyer agency and all that is tethered to it like dual agency and designated agency. I remember touring the State and helping licensees with these new concepts and practices. I also remember stubborn licensees who, dagnabbit, liked things the way they were and were never going to be a buyer agent or cooperate with buyer agents!

Things have changed. Assuming that you are not selling your own listing, you are doing so as a buyer agent and the thought of being a subagent is . . . well, not even a thought. Mostly, things are going smoothly in the buyer agency department.

So, what isn't going so well? Too many buyer agents aren't having their written agency agreements signed at the beginning of the relationship. Originally, RELRA provided:

A licensee may not perform a service for a consumer of real estate services for a . . . commission . . . paid by or on behalf of the consumer unless the nature of the service and the fee to be charged are set forth in a written agreement between the broker and the consumer that is signed by the consumer.

That's right, the law required that you not set about your business as a buyer agent until you and the buyer had an executed agreement. The problem that we quickly observed was that a relationship that began over the phone and via internet didn't lend itself to this demand. Keep in mind that the E-signature software was not in use and having a contract signed meant an in-person visit or a postal exchange. It didn't seem right that you couldn't begin your property search or qualify a client simply because you did not yet have the buyer agency agreement in hand.

Our voices were heard (thanks to PAR's lobbying effort – think "RPAC") and the legislature amended RELRA to add the following to the section quoted above:

This paragraph shall not prohibit a licensee from performing services before such an agreement is signed, but the licensee is not entitled to recover a . . . commission . . . in the absence of such a signed agreement.

That, together with the oral consumer notice meant that we could start our preliminary efforts on behalf of a buyer almost immediately. Unfortunately, those who were not obtaining buyer agency contracts in a timely fashion previously, now found their dilatory efforts were legitimized. I am convinced that there was a time when the majority of buyer agents were having their agency contracts signed at the same time they were penning an offer!

If the law allows you to provide licensed services before your buyer agency contract is signed, what's the problem with having the contract signed when the offer is prepared? First, what is your recourse if the buyer jumps ship (fires you and moves on to a new buyer agent)? If you've "sold" that buyer to a property, it may be that you can claim your prize as the procuring cause. But if you did not introduce and sell the property to the buyer or if the fee offered by

the listing broker is less than your minimum, you are out of luck. Without a contract you are unable to sue a buyer for amounts owed or anything else.

You probably have good working relationships with your buyers, and maybe you have never been burnt by not having your buyer agency agreement signed at the beginning of the relationship. Don't be fooled by your experience. One appearance before a hearing examiner at the Bureau of Professional and Occupational Affairs will erase all of the past luck you may have enjoyed.

Get your contract signed as soon as possible in the relationship. Your contract establishes the working relationship between you and the buyer, including whether the buyer is engaging your services as a subagent for the seller, buyer agent, transaction licensee or as a seller agent (you have the listing and are not representing the buyer). What you do and how you advise your buyer is dependent on the nature of the relationship. If something goes awry and you end up the subject of an investigation, without a contract your word is not likely to fair well against the buyer's. After all, you had the opportunity to resolve all doubt as to the nature of the relationship and the fee to be charged by having your client sign an employment contract.

What is it that makes it so difficult for a buyer agent to have a buyer sign a contract early in the relationship? Are you afraid to discuss fees or have your client acknowledge that they are retaining you? I wouldn't dream of representing a client without putting in writing what I charge, the services I will provide and how I will account for my time and effort. Why should you?

I presume many of you like to establish a rapport before you broach the subject of having the buyer sign you to a relationship. Is your work for the buyer unimportant? Do you consider yourself a professional who is entitled to a commitment or are you willing merely to commit to providing the services without a corresponding commitment?

For those who fear signing a buyer to a contract, consider using PAR's *Non-Exclusive Buyer (Tenant) Agency* contract. It does not commit a buyer to working with you for specified period of time, but rather provides that when you are performing services for the buyer, you are doing so as a buyer agent (with buyer's consent to dual agency). You have the ability to disarm a buyer by advising that the buyer can work with any agent he or she desires. After all, it's the quality of your services that will keep the buyer at your side. (Until 1999, agents working with buyers did not have written agency contracts and there probably was no greater incident of buyers abandoning the agents with whom they were working than there are now with the use of written agreements). Under the non-exclusive agreement, if you introduce a buyer to a property and the buyer fails to get you paid (by a cooperating listing broker) you have the ability to sue the buyer for the fee that you have earned. Check with your broker to see if your office permits non-exclusive buyer agency contracts; brokers review the agreement and consider why you shouldn't use it.

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