



Commission Explanation for Buyers

Introduction

Prior to 1983 all real estate agents were sub-agents to the sellers and represented their interest. 71% of buyers thought they were being represented, but were not.

The Federal Trade Commission (FTC) involvement changed the business model to have both sellers and buyers represented by their own agent.

A real estate commission, usually a percentage of the sale price, is paid to real estate company for handling the sale of property. This company, called the listing broker may place the property into the Multiple Listing Service (MLS) to be shared with other member companies. The buyer agent portion of the commission was included in the commission and paid by the seller. Buyers were effectively paying their side of the commission in their purchase price. Recent litigation has changed this.

Litigation

Recent litigation claimed that there was a violation of anti-trust laws in regard to the negotiability and payment of commissions. The plaintiffs asserted that the requirement to display a coop brokerage fee in MLS listings put pressure on sellers to offer high commissions to attract buyers' brokers, that they were unaware that the buyer agent commission was negotiable, and that they were paying for a buyer agent not working in their interests.

Results

As a result of this litigation, the rules for the negotiability and payment of commission have been changed or clarified.

1. The amount of commission is negotiable between the broker and their client, whether the client is a seller or buyer. Brokers are not deprived from holding to their stated fee schedule.
2. Agents may no longer refer to the buyer agent commission as free when it is included in the purchase price.
3. Sellers are no longer required to offer buyer agent compensation through their listing brokerage. This may leave buyers responsible for this payment.
4. Buyers have the options to a) pay their agent directly, b) see only homes that offer buyer agent compensation or c) ask for a seller concession in their offer to purchase.

Summary

The results of the lawsuits have created more transparency in the payment of commissions in the real estate industry. Sellers will have a more clear understanding of how commission is paid and how it may be split between the listing broker and selling broker. Buyers will now take on more responsibility in paying their agent's side of the commission. Review your options with your real estate agent.

