

August 14, 2020



## Errors Of Omission And Sins Of Commission

**Dear Dave:** We've been interested in a piece of land. We called the listing agent and she gave us some info. We then went to another agent and asked him to represent us. He explained that he would only get paid if the deal went through and that then the two agents would split the 6% commission. So both agents only benefit if the deal closes, and they both make more money if the price is higher. We then felt that our representative was pressuring us to hurry up and close at what we thought was a too high price. It seems to us that under Alaska law, which allows splitting commissions, that no one really represents the buyer. Are we wrong about this?

**Answer:** Your fundamental question about whether percent commissions may affect the degree of representation is an excellent inquiry.

'Compensation' for Realtor services is really a separate issue to 'Representation' and should not affect how aggressively your agent negotiates for you. Commission splitting is common throughout the U.S. However, what the commission is, and who pays it, can be structured in a dozen ways. Splitting the listing commission has been seen to be 'convenient' to avoid buyers hav-

ing to pay their Realtor a fee when they need all the money they have for the purchase. It doesn't have to be split, it is merely a tradition.

When you first approached your agent, he should have given you a Consumer Pamphlet and discussed representation, not compensation. Any Real Estate Licensee not doing this is violating his 'rules of engagement' and subject to discipline by the Real Estate Commission. The Alaska laws are quite specific on this, as opposed to silence on commission arrangements. Failure to discuss the representation issue is an error of omission on his part if this was not explained to you.

With regard to commissions and potential 'sins of commission', this is a reasonable question. The commission rate, or dollar amount, negotiated by the listing agent is entirely between her and the seller. The 6% you mention is somewhat unusual on vacant land but that is none of my affair. In turn, the listing agent (listing licensee) may agree with her client to offer part of that commission, in this case 3%, to a selling agent (licensee).

Frankly, I pay little attention to this amount when I represent a buyer. It would be a 'sin of commission' for the real estate licensee to allow this to influence him in his negotiations

on your behalf. However, this ethical question may affect some, but it would be difficult to prove guilt. I am a big believer in intuition myself, and I think that each customer must evaluate the quality and character of their representative before engaging their services.

There is nothing wrong with you asking your Realtor about how he or she will be compensated. It has been a tradition for sellers to foot the bill for both sides of a real estate deal, but it is also entirely legal for the buyer to compensate their agent (licensee) independently.

Finally, sellers should, when agreeing to list property, clarify not only the agreed commission but also how that commission will be split with a selling side licensee. The standard MLS listing agreement now provides for this important discussion to take place as it can impact your odds of selling success.

Dave

Windsor

