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Dave Windsor's 'Alaska Real Estate'

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New Commission Rules Causing Confusion

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Since multi-million lawsuits were settled with major real estate organizations earlier this year the whole landscape of how real estate licensees are paid has changed. What was tradition for decades has required an adjustment in the industry to avoid running foul of the Department of Justice.

For years, a Realtor (or Licensee) listing a property negotiated a fee which was then split with the Brokerage that worked with the Buyer. The courts decided that this was an anti-trust procedure, in effect, that prevented consumers from having a choice about Realtor compensation.

Simply put, the new landscape clearly puts CHOICE front and center for Buyers and Sellers.

Sellers may list a property with their chosen representative and negotiate a fee for services. They have a right to assist with the fee incurred by a Buyer for representation – but can choose not to contribute to the Buyer's expense of representation.

Buyers will now need to enter into a 'Personal Service' or 'Buyer Representation' agreement with their chosen Licensee and they, also, can negotiate (or choose) what that service is worth.

The complication, however, now arises as to how the homebuyer can afford that extra fee, on top of other closing costs, to successfully acquire a home. So, Licensees will be explaining to Buyers that the Seller of their chosen property may or may not cover the Buyer representation fee.

Sellers have the choice to cover a buyer representation fee, but it may fall short of the fee that is negotiated between the Buyer and Buyer's Licensee. The Buyer may end up making up the shortfall.

The general public, plus real estate Brokerage firms, plus MLS, are all in a state of some confusion about how to implement the new legal framework.

The Industry must make it clear to Sellers at the listing appointment, and Buyers upon initial engagement, that they have choices. Consumer choice is the key underlying principle. I have developed my own procedure and script with Sellers and Buyers to ensure that choice is clear.

However, it is necessary for Sellers to understand that, if a Buyer writes an offer to purchase the Seller's property, the expense necessarily incurred by the Buyer for representation may well be part

of negotiations along with closing costs and other terms.

Brokerage firms in Alaska will need to come to a consensus, together with MLS, on how the consumers, both Sellers and Buyers, can best be served to facilitate real estate sales transactions while complying with the 'fairness' envisioned by the new legal requirements.

Ask lots of questions before signing a Listing Agreement or a Buyer Personal Service Agreement (sometimes called Buyer Representation Agreement). If your Realtor or Licensee cannot make it absolutely clear, ask for a meeting with their Broker.

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