

## **Errors of Omission And Sins of Commission**

**December 28, 2014**

**Dear Dave:** We've been interested in a piece of land. We called the listing agent and he 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 the split of 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, no one really represents the buyer. Are we wrong about this?

**Answer:** Yes, you are wrong, but 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 licensee 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 hundred ways. Splitting the listing commission has been seen to be 'convenient', to avoid buyers having 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. It also does not have to be a percentage.

In this case, when you first approached the chosen licensee (no longer called an 'agent'), he should have given you a Consumer Pamphlet and discussed representation, and 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. Failure to discuss the representation issue, and what is meant by representation, would be an 'error of omission' on his part if this was not done.

With regard to commissions, and potential 'sins of commission', your question is a reasonable one. The commission rate, or dollar amount, negotiated by the listing licensee, is entirely between him and the seller. The 6% you mention is somewhat unusual on vacant land but that is none of my affair. In turn, the listing licensee may agree with his client to offer part of that commission, in this case 3%, to a selling 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 Licensee behaviour, and it would be difficult to prove. 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 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 licensee.

Finally, a note to sellers:- When agreeing a commission rate or amount with your Realtor, please be sure to ask him or her what will happen to that commission. If you think that the fee will be

split 50/50 to incentivize a selling side Realtor, that may or may not be happening. Sellers should be informed before other 'sins of commission' (by the listing licensee) occur when you are 'assuming' an equal split will be applied between listing and selling sides. Good and reputable Realtors have nothing to hide in this regard and will gladly provide full disclosure of how they will be compensated, and precisely what services they will provide for those fees charged.

**Dear Dave:** We are first-time homebuyers in Anchorage. How many properties should we look at before making a decision?

**Answer:** In a recent survey by the National Association of Realtors it was calculated that the average buyer walked through 10 homes, and searched for 8 weeks, before finding the home which they ultimately purchased.

However, there is no fixed rule for you to follow. The most important thing for you to do is clearly inform your Realtor as to what you want. As with any relationship, communication is the key. With today's limited inventory, you must trust your Realtor's judgment. Remember, she is seeing property all the time, and can tell you when the best home for you comes along. This may take one day or a month but, if you are still unhappy with the choices after 3 months, you probably shouldn't be shopping at all.

**Dear Dave:** I have a question. I am not sure who to ask, so I am hoping that maybe you could give me some advice. We live in Wasilla and about 8 years ago one of the houses next door to us was sold to an owner who rents it out. Most of the renters have been pretty good but we have new renters again. They moved into the property in September, and at first they were OK. But within a month they started letting their dog bark for hours at a time. After that it just got worse. What steps do we need to take to cover our bases on this issue?

**Answer:** Barking dogs can be annoying and, interestingly, your Matsu Borough Title 24.05.030 makes it an offense for dog owners to allow their dogs to "annoy any person". The Code is enforced by Animal Control and they may be contacted at 907-761-7501. You may also obtain information at [www.matsugov.us/animalcare](http://www.matsugov.us/animalcare). If you click on the tab "Animal Care Forms", you can make your complaint.

The object of the Code is to provide for reasonable protection from animals that may bite, harass or generally aggravate neighborhood residents. You should also make a 15 to 20 minute audio recording to back up your complaint. An Animal Control Officer will address the problem and the Department can even impose fines. This is the best way for you to proceed, unless you can persuade the Tenant, or Property Owner, to change things.