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## **Understanding a written commission agreement: When are you entitled to a commission? - By David Gabay**

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David Gabay,  
Gabay Law Group

One of the most important questions professional brokers and agents ask me is whether he or she is entitled to a commission on their deal. The answer depends on whether you have a written commission agreement or not.

If you have a written commission agreement, then you are entitled to what your contract says you are entitled to. This is a simple and obvious answer, and in my experience with real estate contracts the simplest answer is often the correct one. Now, there are many ways to write a commission agreement, and the standard forms you normally use can be changed or amended. So, the first step in answering questions about your commission is to read and understand the contract you and your client signed. The precise language used in these contracts is the most important thing to consider, and therefore you should always let a real estate attorney you trust read your contracts before deciding on the best way to approach a commission problem or issue.

On the other hand, if you do not have a written agreement, please don't panic and don't give up. While you should absolutely have a written agreement if at all possible (because that's better for you and makes deals go smoother), it is not an actual legal requirement in New York.

Where there is no written contact, you are still entitled to a commission for representing either a buyer or a seller if you produce a buyer ready, willing, and able to purchase the property on the terms sent by the seller. You need to be the procuring cause of the deal, meaning that you must show a direct and proximate link between what you did and the completion of the transaction.

Generally, the courts have stated that in the absence of an agreement to the contrary, a real estate broker will be deemed to have earned his or her commission when he or she produces a buyer who is ready, willing and able to purchase at the terms set by the seller. A broker does not earn a commission merely by calling the property to the attention of the buyer. But this does not mean the broker must have been the dominant force in the conduct of the ensuing negotiation or in the completion of the sale. Rather, the broker must be the procuring cause of the transaction meaning that there must be a direct and proximate link, as distinguished from one that is indirect and remote between the introduction by the broker and the commission of the transaction. The courts have used different phrasing and language to describe this standard, but they all agree that this is the applicable rule.

In those situations where you do not have a commission agreement, the first and most important step in handling a commission dispute is to gather all of the emails, text messages, faxes, documents, marketing materials, office calls and showing logs, and other information which show what you did to bring about a successful transaction. At this stage, nothing is too small to document. You should also do the same for any other broker or agent involved in the transaction, so that you can compare your effort and involvement to theirs. Once you have this information, you will be prepared to either negotiate a solution or begin litigation to enforce your rights under the law.

Now, you should understand cases where there is no written agreement are harder to prove, the other side will defend them more aggressively, and therefore they are more risky and expensive.

But, it does not mean you should walk away or give up if you have a solid case.

David Gabay is a real estate litigation attorney at Gabay Law Group, Hauppauge, N.Y

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540