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Denver MLS Resists Push to Pay Commissions Based on Net Purchase Price

REAL ESTATE TODAY

By JIM SMITH, Realtor®

Each side in a real estate transaction has its own closing costs. For the seller, those costs are primarily the commission paid to the listing agent — who splits that commission with the buyer's agent — and the title insurance policy, plus a few hundred dollars of miscellaneous fees. There are other deductions at closing, the biggest of which is paying property taxes which aren't due until next April, but those are not a cost of selling the home.

On the buyer side, the biggest closing costs are associated with the mortgage loan — appraisal, points, pre-paid interest for the first month, etc. — plus fees to the closing entity.

Often, however, a transaction is structured with the seller paying some or all of the buyer's closing costs so that the buyer doesn't have to bring as much cash to closing. This is particularly common in purchases involving an FHA or VA loan with their zero to 3.5% down payment requirements.

With a VA loan, the buyer can get 100% financing, so if the purchase price is inflated by the amount of the closing costs, and the seller pays those costs, the buyer can literally bring no money to closing and even get his earnest money deposit refunded at closing.

One of my listings went under contract this Monday with exactly that scenario. Instead of a purchase price of $245,000, the contract is for $250,000 with $5,000 in "seller concessions" to pay the buyer's closing costs.

I did a quick count just now, and about one-third of all closed transactions in recent months reported seller concessions of $1,000 or more — some over $10,000.

A seller might reasonably expect that he pay the commission on the net price after concessions. Although a listor may agree to do that, MLS rules require him to pay the buyer's agent based on the gross purchase price. A motion to allow payment on net price, using language provided by the National Association of Realtors, was voted down at July's meeting of the Metrolist board of directors.

As the listing agent, I can ask the buyer's agent to accept a commission based on $245,000 instead of $250,000, and he might agree, but if he took me to arbitration after the closing, I would lose.

The numbers get really big on new homes, where builders typically pay commissions against the base price of the home prior to upgrades, which can run to over $100,000 in some cases. If the home was listed on the MLS, the buyer's agent can take the listing agent to arbitration and likely win.

eContract Software Now Common

Rarely in my real estate career have I seen a new technology adopted as quickly and widely as electronic contracts. A year ago it would have been rare to receive an electronic contract, but nowadays they're almost the only kind I receive. After reviewing the offer on my laptop, I forward the link to my seller(s), who can sign or counter the contract right on their computer screen, without ever printing it out. They sign with their mouse, although they could also sign with a stylus on a tablet computer.

This is a "green" technology, one which reduces the amount of paper that needs to be printed in the course of a transaction. For those not yet comfortable with applying an electronic signature to a document in this way — for one thing, it barely resembles your written signature — the option is provided to print out the contract, sign it, and return it physically or otherwise.

But nothing can compete with the speed possible using this software. Within a span of five minutes, my client could sign a document and the other client across town or on the other side of the world can sign, and each party can then see the fully signed contract using the same online link. I now fully embrace this technology.

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