

With the Rise of Electronic Contracts, Agents May Not Be Fully Explaining Documents

When I first was licensed as a real estate agent 20 years ago, we hand delivered listing agreements and other documents and would go through them paragraph-by-paragraph before asking buyers or sellers to sign them.

Now that electronic contracts and electronic signatures are commonplace, that's not happening so much, and I think that's a problem — one that may have contributed to the recent verdict against seller agents offering compensation to agents who produce a buyer for their listings.

I am guilty of this myself. When I am in a listing presentation I bring my laptop and like to compose a listing agreement while the seller is at hand, explaining each entry that I

make in the 12-page document. But just as often I will prepare the document at my desk and send it to the client for review and signing, saying, "Call me with any questions." I don't believe I am any different than 90% of my colleagues in that practice. I must admit, however, that doing so is not adequate, and I'm committed to changing that practice and asking the client to call me after they receive a document so I can walk them through the document over the phone, paragraph-by-paragraph.

By doing that, I can explain how the practice of "cooperation and compensation" works to the seller's advantage by attracting the maximum number of showings and offers to purchase their home.

There are many contracts that real estate agents prepare in addition to the listing agreement, the buyer representation agreement, and the contract to buy and sell a home that could benefit from thorough explanation to our clients.

For example, the Sellers Property Disclosure contains the following instruction in bold caps: "**THIS SELLER'S PROPERTY DISCLOSURE SHOULD BE COMPLETED BY SELLER, NOT BY BROKER.**"

That does not mean, however, that the listing agent should not as-

sist the seller in completing the document accurately, since many of the items in that disclosure may not be understood by the average seller.

For example, the document asks the seller to disclose any problems with some items which they may not recognize such as "backflow prevention device" or "lift station." My practice is to ask sellers to complete the form and save it but **not to sign it** until I can review their data entry. Alternatively, especially with the elderly, I offer to be their secretary, reading each line of the document and entering their responses, explaining when necessary what each line in the disclosure refers to.

Completing an inspection objection for a buyer and going over a buyer's inspection objection with a seller requires a lot of coaching, and clients reasonably expect us to explain the issues involved and strategize what the buyer should request of the seller — and likewise, with the seller, to strategize on how to respond to those demands.

Navigating the inspection objection and resolution process is where a real estate agent is most needed, since the typical buyer and seller has little experience with this critical phase of the selling process. A new agent should enlist the help of his or her "seasoned" colleagues, because years of experience in this area can make a huge difference in the results obtained, whether their client is a buyer or a seller.

Many agents hire "transaction coordinators" to handle the day-to-day aspects of shepherding a transaction from when it goes under contract until it closes, but the agent is responsible for the entire process, and I have declined to turn over that responsibility to unlicensed assistants. I want to handle details, such as inspection, myself so that my clients benefit from my years of experience.

As the managing broker at Golden Real Estate, I coach newer broker associates on these matters so they benefit from my experience.

The Buyer Agency Agreement Accommodates Verdict Against Buyers' Agent Commissions Paid by Sellers

Everyone is wondering what will change as a result of the recent verdict in Missouri against the National Association of Realtors and several major real estate companies regarding the payment of buyer agents' commissions by sellers.

The state-mandated "Exclusive Right-to-Buy Listing Contract" has long had the following paragraph which is rarely selected in lieu of the paragraph stating that the buyer's agent will only be compensated by the seller. My prediction is that this paragraph will become the go-to choice of buyers' agents when they present the buyer agency agreement to prospective buyers:

7.3.1. Listing Brokerage Firm or Seller May Pay. Buyer IS Obligated to Pay. Broker is authorized and instructed to request payment of

Brokerage Firm's Success Fee from the listing brokerage firm or seller. Buyer is obligated to pay any portion of Brokerage Firm's Success Fee which is not paid by the listing brokerage firm or seller.

Heretofore, the common selection on Buyer Agency contracts has been the following paragraph:

7.3.3. Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay. Broker is authorized to obtain payment of Brokerage Firm's Success Fee from the listing brokerage firm or seller.

In the near-term, I foresee sellers still authorizing listing agents to share their commission with agents who produce a buyer, but I foresee buyer agents checking Sec. 7.3.1 to protect against the absence of that offer of compensation.

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Our Monthly Report on the Real Estate Market

In October 2023 the metro Denver real estate market exhibited shifts in the single-family detached market, impacting both buyers and sellers.

Despite a rise in available homes, the market remains notably tight, with 17.6% fewer listings compared to the typical numbers from 2013-2019. This scarcity, however, presents opportunities for homebuyers, signaling a shift in the market dynamics.

Pending home sales dropped by 5% from September to October and declined year-over-year by 7.9%. Closed transactions also dipped by 8.9% from September to October, with a drop of 17.9% from October 2022.

The inventory of active listings, a key indicator, rose by 14.3%, reaching 2.4 months. This suggests a cooling market heading into November and December, potentially giving homebuyers more room for negotiation.

Despite the above downward trends, *average* sold prices increased slightly by 0.2% to \$765,842, and while the *median* sold price fell month-over-month to \$636,288, both

numbers are higher than a year ago.

There was a decrease in the number of multiple-offer situations compared to prior years. Homes in such scenarios are now selling for an average of 2.7% over the asking price.

The average days on the market increased to 30, with 36.6% of homes under contract in 7 days or less, selling for 100.4% of their initial listing price.

26.5% of homes sold over the asking price, but 69.7% of them included concessions averaging around \$9,300, primarily to buy down the buyers' mortgage interest rate. We're seeing many buyers offer above listing price but with a seller concession to buy down their interest rate.

Call any of us at Golden Real Estate to see how we can help you benefit from the present market and submit a winning offer on the home of your dreams.

My thanks to Megan Aller of First American Title for assisting me with the statistical analysis reflected in this article.



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