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What Is a 'Variable Commission' and Why Should Sellers Demand It?

REAL ESTATE TODAY

By JIM SMITH, Realtor®

This week's column is intended to help those who might benefit from a better understanding of how real estate brokers are paid. If you're already well versed in this, please bear with me while I share some information with those who aren't as well informed.

Before I explain what a ***variable*** commission is, let me explain who pays — and who receives — the commissions in the typical real estate transaction.

Normally, sellers pay the full commission to the listing agent, who then compensates the agent representing the buyer. How commissions are paid and shared is the primary purpose of the Multi-List Service, or "MLS" — to provide a system of "cooperation and compensation." If you're a member of an MLS (a must if you want to do more than just word-of-mouth real estate), you commit to putting all your listings on it so that other MLS members can show and sell them. MLS listings disclose how much the "cooperating" broker will be compensated by the listing agent for procuring the buyer.

Real estate firms may not dictate, share or discuss the commission rates that their agents charge sellers. To do so would constitute price fixing, a federal offense under the Sherman Anti-Trust Act of 1890. Brokerages may, however, dictate the amount each agent offers to other agents who sell their listings. At Golden Real Estate, we, like most brokerages, require that our broker associates offer a minimum 2.8% "co-op" commission. Offering less could result, I've found, in fewer showings by other MLS members.

There's some history behind that 2.8% co-op commission. Before the Justice Department forbade the real estate industry from engaging in the fixing of real estate commissions, the Denver Board of Realtors fixed the rate at 7% and pegged the co-op commission at 40% of that, which is 2.8%. Listing commissions began falling due to competition once Realtors could no longer tell sellers there was a "standard" commission, but the co-op commission remained at 2.8% to assure their listings got shown by agents. As a result, it's not uncommon now for listing agents to receive less at closing than buyers' agents, even though they absorb all the costs of listing a home — signs, advertising, photos, video tours, showing service, staging consultations, etc.

Perhaps you've seen ads offering a "1% listing commission." Such ads conceal (except in their fine print) the fact that an additional 2.8% is added to compensate the buyer's agent. As noted above, the listing commission ***includes*** what the listing agent will pay the buyer's agent, so promoting a "1% listing commission" is, quite simply, misleading or deceptive advertising.

That said, let me now explain what a "variable commission" is and why sellers should demand it.

A variable commission is one which is reduced when the listing agent does not have to compensate a buyer's agent — in other words when the listing agent sells a listing to his own buyer or to an unrepresented buyer, such as an open house visitor. Listing agents like to "double-end" a listing, because doing so can double what they earn on a given transaction.

Sellers certainly want their listing agent to be motivated to sell their own listings, but when that happens, should the agent share his good fortune with the seller? That's the purpose of the variable commission.

Typically, I list a home for 5.6%, committing half of that (2.8%) to paying a co-op commission, but I reduce my commission to 4.6% when I sell the home myself. That way, I still earn more, but my seller pays less. I want it to be a win/win.

MLS rules requires that each listing disclose the existence of a variable commission, so that brokers representing buyers know what they are up against in the event their buyer must compete with another buyer who doesn't have his own agent.

Before submitting an offer, buyers' agents typically ask the listing agent if there are other offers in hand. If the MLS indicates that there is a variable commission, the buyer's agent will want to know whether any of the offers are from unrepresented buyers and, if so, the amount of the variable commission differential. If the differential (as with my listings) is 1%, then the buyer's agent knows that his client's offer has to be 1% higher than an unrepresented buyer's offer in order to be of equal monetary value to the seller.

Likewise, when meeting with unrepresented buyers, the listing agent can advise them that the variable commission makes their offer worth 1% more if they don't engage an agent to represent them.

At Golden Real Estate, we have other rewards we can offer the unrepresented buyer, including "totally free moving" — free use of our moving trucks, free moving labor, gas and packing materials — if they choose to work with us instead of hiring a buyer's agent.

As a matter of principle, I believe that a variable commission ***should*** be part of every listing agreement. However, my own research of sold listing on the MLS found that less than 20% of them indicated a variable commission. In other words, more than 80% of sellers signed a listing agreement that allows their agent to keep 100% of their commission if they double-end the sale.

My research has also shown that roughly 7% of all real estate sales are double-ended. Thus about 7% of that 80% missed out on a multi-thousand-dollar discount in their real estate commission that they might have enjoyed by listing with, say, a Golden Real Estate agent.

Many homes are sold before they are made active on the MLS. Some, but not all, are put on the MLS after closing, showing zero days on market. I mentioned above that 7% of MLS sales overall are double-ended, but that percentage jumps to roughly 31% for MLS sales with zero days on market. Of those, 70% did not indicate a variable commission. Many of those sellers, one can surmise, not only did not get as high a price for their home as they might have if it had been put on the MLS as an active listing, but also lost out on a discounted commission.

It should be noted that while the MLS considers a variable commission worthy of having its own data field, the standard listing contract lacks any place to specify a variable commission. If the contract had a section to enter that information, more sellers might ask about it before signing. Instead, unless your agent offers it proactively, as we do, you may not think to ask about including it as an additional provision.

Electric Vehicle Events in Golden & Denver

This Saturday, **Sept. 14th, from 10 am to 3 pm,** Golden Real Estate is hosting National Drive Electric Week in our parking lot at **17695 S. Golden Road in Golden.** This is our 5th year hosting the event. From Sept. 14 to 22 there are 307 events around the country, nine of them in Colorado. In addition to ours on Sept. 14th, there are events in **Denver on Sept. 19th,** Pueblo on Sept. 14th, Longmont and Ft. Collins on Sept. 15th, Avon on Sept. 18th, and Colorado Springs, Durango and Grand Junction on Sept. 21st. Info on all of them is at DriveElectricWeek.org. What's so cool about this event is that there are no dealers present, only actual EV owners showing their own vehicles, answering questions and sometimes offering rides "around the block" to interested visitors. At press time, 19 such EV owners had registered to attend our Golden event. On the website you can register as an EV owner or as an attendee. We'll also have a booth from Ecology Solar, which sells home solar systems to fuel your EV as well as power your home, and Pedego Golden, a new bike shop, will be giving free test rides on electric bikes.

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