

# REALTOR Mag

## Commission Clashes

Fights with—and between—your sales associates over compensation can devastate your company. Here's how to resolve them.

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Paul Caillaud has seen the corrosive effect an internal commission dispute can have on a company, and he's glad he watched it from afar.

"All I can say is that it's a bad thing," says the general counsel at the 85-salesperson RE/MAX Preferred in Fort Lauderdale, Fla. Caillaud's intent is always to resolve conflicts between brokers and salespeople in the hope of avoiding litigation. "In one case, a salesperson left [another brokerage], and everybody in the office knew what was going on. We got phone calls from that company's associates wanting to affiliate with us, which was wonderful for us but crappy for the broker who created the situation."

What caused the dispute? To close a transaction—after having cleared it orally with his broker—a listing agent told his clients that his company would reduce its commission by half a percent. At the closing, however, the broker balked. The broker got his way, taking the \$400 in dispute out of the listing agent's share of the commission. Caillaud became aware of the dispute because one of his company's salespeople represented the buyers in the deal.

The broker eventually relented, but the damage had already been done. "For \$400," Caillaud says, "the broker risked that sales associate leaving and the polluting commentary of that salesperson as he went out the door."

Commission disputes between sales associates at your company can cause similar harm if you don't have a process for skillfully resolving them. Here's how to do just that for both types of disputes.

### Spell Out the Rules

Last-minute agreements, such as the one Caillaud described, can lead to trouble. So can sudden departures in which salespeople mistakenly believe they can take a client with them in the middle of a transaction, says Alex Wang, a principal and broker-associate at Sereno Group in Palo Alto, Calif.

There are two keys to avoiding fights with sales associates over money. First, detail your company's rules in your office policy manual. "We have a 40-page manual that we have sales associates sign annually," says Pamela Cirkiel, ABR, CIPS, broker-owner of M.E. "Gene" Johnson, REALTORS®, in Round Rock, Texas. "We have a section on commission disputes that basically says, while there will occasionally be misunderstandings, they will be handled promptly by the parties involved. If they can't be resolved by the parties, we'll use our local board's arbitration services. We have a really good dispute resolution program at the Austin Board of REALTORS®." Indeed, every state and local association is required to offer dispute resolution services, including mediation and arbitration, to their REALTOR® members. But all parties must agree voluntarily to participate. Neither agents nor brokers can force anyone into dispute resolution.

Cirkiel's manual also has provisions about the importance of a positive attitude, honesty, and integrity. "I think that helps me avoid these kinds of disputes," she says. "When people are happy where they work and don't feel threatened, there are fewer disputes."

Second, put into writing last-minute side agreements that deviate from your overall commission agreement with sales associates. "Be clear in your conversations, and then put those conversations in writing," suggests Wang. "Just shoot it in an e-mail saying, 'This is my understanding of the agreement.' It's easy to fix these problems in the beginning. Later on it's tougher."

### Referees for Salespeople

More common than commission disputes between brokers and salespeople are internal squabbles between sales associates.

Caillaud has seen disagreements occur when two salespeople have different understandings about the nature of a referral: The associate who receives the lead expects to pay a referral fee of a particular amount, while the other associate is looking at the transaction as more of a co-op sale, with the salesperson's portion divided differently.

To resolve such disputes, Caillaud's company creates a mediation panel. "We set up the equivalent of a traditional board of REALTORS® mediation," he explains. "We'll have five associates, usually from our other offices, on the panel. Those involved in the dispute will present their arguments, and their fellow salespeople will make the decision. That decision is binding on the salespeople and the company."

Associates can also disagree over procuring cause. Cirkiel has seen that twice in the past six years with the same salesperson, a person Cirkiel respects. "She's a very hard worker and in the office a lot," Cirkiel says. "She feels if she greets people at the door, they're her clients. So if they come back and sign a buyer representation agreement with someone else, she's upset."

The best way to avoid procuring cause disputes? Train sales associates to ask buyers if they're working with another salesperson and to sell the benefit of signing a buyer agency agreement. That approach, however, isn't always foolproof. "The second time there was a dispute, the client actually signed two buyer representation agreements," Cirkiel says. "Both associates told me they asked the client, 'Are you working with another salesperson?' and 'Have you signed a buyer agency agreement with another salesperson?' And I believed them."

In both cases, Cirkiel asked for all the paperwork the sales associates had on the transaction and met with each individually. Then she met with them together, heard both sides, and made a decision. In both instances, she shaved the company's share of the commission, resulting in a loss of \$1,200 and later another \$5,000. Those may seem like big hits, but Cirkiel says they weren't when she considered the success of her company in the long term. "I took the company's portion and distributed it to make things more equitable—not to make everybody happy. I didn't have to, but I was willing to take a hit to make these go away. The way I look at it is that some sales associates aren't willing to compromise when there's a dispute. But if you can inspire them by showing you're willing to compromise, they will learn to as well."

#### 4 (Possibly) Outdated Policies

Some office policies or traditions have become antiquated, or at least less compelling, as business practices change. Ignoring these shifts could pose harm to your company. Here are four policies you may want to revisit at your office.

##### 1. Floor time.

Many brokers say giving agents shifts in which they answer phones in the office is an anachronism and a waste of a good sales associate's energy and motivation. Replace floor time with an automated phone system or a trained receptionist.

##### 2. Weekly sales meetings.

It's not that sales meetings aren't a good idea. But a weekly meeting gets old, and it's hard to provide valuable information every week. Better to have monthly meetings or to arrange one-on-one or small-group sessions with sales associates as you identify specific needs.

##### 3. Escrow management.

Many brokers have escrow policies—but haven't updated them in eons. In fact, disclosure laws can change pertaining to whom notice must be given that brokers are holding funds in escrow and how they have to provide that notice. When there's a claim or lawsuit against a broker, it often involves an escrow dispute, and it can end up being costly. Be sure to review your escrow policies annually to reflect emerging trends in escrow claims.

##### 4. Perks for selling in-house listings.

If your commission schedule provides a higher split when your sales associates sell an in-house listing, you could be taking a risk. Lawyers are beginning to see claims in which buyers allege sales associates "steered" them to in-house listings.

*Sources: Joe Adkins, broker-owner, The Realty Factor, Altamonte Springs, Fla.; Rob Hatchett, president, Crye-Leike Franchises, Chattanooga, Tenn.; Jim Lowenstern, GRI, CEO, Castles Unlimited, Newton, Mass.; Sylvia Golden Norris, Sylvia Golden Norris PA, Sarasota, Fla.; Dax Watson, Mack, Drucker & Watson, Phoenix.*

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