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Terminating a contract with your real estate agent in Maryland can cost you big bucks if you're not cautious



(John Bazemore/AP)

If you are buying or selling a home in Maryland, there are some important changes to the agreements you sign with your real estate agent and broker you should know — changes that could cause you headaches and cost you money if you are not careful.

Last Thursday, the Greater Capital Association of Realtors (GCAAR) introduced procedures to follow when a buyer or seller wants to terminate their relationship with the agent. Previously, the seller and agent would have already agreed upfront on an amount the seller would reimburse the agent for advertising and other expenses before they parted ways. The same procedure was used for buyers wishing to end their relationship with the agent.

In the newly revised agreements, the fee is still there — but it is not required for the two parties to agree on the amount ahead of time. As a matter of fact, it is not even mentioned

upfront. That means if you terminate the contract, theoretically the agent can charge you anything after the fact. Moreover, sellers could be hit with a potentially bigger cost from another provision if they are not careful — they could be obligated to pay a commission to not only their new agent, but also to their prior agent.

“I expect my phone to start ringing,” said Matthew Alegi, a real estate attorney with Shulman Rogers in Potomac. “It is troubling to anticipate that the consumer will be willing to pay money to get out of the contractual obligations. Consumers could be held hostage if there is no agreement.”

Why were these changes made?

“The Maryland Brokers Act has not changed,” said Marty Stanton, an attorney with KVS Title and a member of the GCAAR forms committee. “Our goal was to modify the forms to properly reflect the law and make it understandable for the consumer.” Stanton said agents are “cutting our nose to spite our face” by including the termination fee upfront in the agreement because “you get into an agreement with the idea that it will be successful.”

According to the Maryland Real Estate Brokers Act, sellers and buyers can unilaterally terminate the agency relationship with their agent before the expiration date — a very consumer-friendly right. However, mutual agreement is required to terminate the contractual obligations.

In Washington and Virginia, there must be mutual agreement to terminate before the expiration for both the buyer agency relationship and the contractual obligations.

It is important to understand that when you sign a listing agreement or a buyer agency agreement you are agreeing to two relationships — an agency relationship and a contractual relationship.

The agency relationship, in the case of a buyer, gives the agent the exclusive right to represent a buyer in the “purchase, option, or exchange of real property or cooperative units.” For a seller, the agency relationship gives the exclusive right to the agent “to sell, exchange, or convey your property.”

The contractual obligation is to work exclusively with the agent during the term of the agreement and to pay a specified commission amount at the time of settlement for any property purchased during the term of the agreement — no matter who locates the property. (If a property is advertised in the multiple listing service, sellers automatically are required to pay the buyer’s agent some or part of the commission the buyer agreed to pay).

If the seller unilaterally terminates the agency relationship, the listing broker must remove signs from the yard and remove the property from the multiple listing service.

However, the contractual obligation can only be terminated early if both parties agree. If there is no mutual agreement to terminate the contractual obligations before the expiration date, the seller still owes the agent the agreed upon commission. The same goes for a buyer.

In the new forms used to terminate a contractual relationship — the “Termination of Buyer Agency Agreement” and “Termination of Listing Agreement” — both parties must agree to a fee to terminate early. This fee can be zero, if both parties agree.

According to Stanton of KVS Title, in any contract that you sign with another party, both parties have to agree to change the terms. “That is law class 101,” he said.

He is bullish on the form changes. “The more time I spent reviewing them, the more convinced I was that these changes reflect the law more clearly,” he said.

So what do you do if you are a home buyer or seller?

“I recommend that you negotiate the fee upfront and document it in writing,” said Jill Michaels of the Law Firm of Jill Pogach Michaels. “I am training agents to discuss this topic upfront so there are no surprises later.”

“How often does this really happen,” Stanton asked rhetorically, referring to the likelihood of early termination of contracts. “Maybe one, two or three percent of the time. Why get hyped up about it.”

“My response to those that oppose the changes is if they want to put numbers into the agreement upfront they can do that,” Stanton added. “If they want to negotiate an early termination provision, the brokerage is welcome to do that.”

It is incredibly crucial to know these changes as you wade your way through the muddy waters of real estate. I highly recommend you read any contract thoroughly and ask questions before signing. You can also review the documents with an attorney familiar with real estate contracts.

There are a few other noteworthy form changes that went into effect Thursday.

In GCAAR Form #1318, called “Important Information for the Purchase of Real Estate,” three new paragraphs were added to briefly provide 1) a warning about the increase in wire fraud in real estate transactions, 2) a warning that an increasing number of sellers may be recording a buyer’s actions or conversations while touring a property, as a result of new technology such as Alexa and Echo devices, and 3) a warning to buyers purchasing a property with solar panels to inquire about the terms in which the solar panels were acquired and installed.

It is important that you work with a broker who provides regular training to their agents on current laws and contract changes so agents understand the changes and can explain them to their clients.