

REAL ESTATE NEWS

A Service to Real Estate Professionals



Courter, Kobert & Cohen, P.C.

ORAL COMMISSION AGREEMENTS

A Note From The Editor:

This bulletin addresses recent developments affecting the real estate community in New Jersey.

The Firm's Real Estate practice, headed by Edward S. Nagorsky, Esq., along with Kevin Hahn, Esq., Michael Selvaggi, Esq., Jeffrey Guth, Esq., Sandy Galacio, Esq., John Abromitis, Esq., and James Moscagiuri, Esq., is one of the largest in North-west New Jersey, both in residential and commercial matters. Please feel free to contact our Hackettstown office should you find yourself in need of competent legal assistance.

Pursuant to New Jersey law a real estate broker must have a commission agreement in writing which identifies the amount or rate of commission in order to be entitled to receive payment. N.J.S.A. 25:1-16(b). However, a broker who acts pursuant to an oral agreement, is still entitled to a commission, but only if:

(1) within five days after making the oral agreement and before the transfer or sale, the broker serves the principal with a written notice which states that its terms are those of the prior oral agreement including the rate or amount of commission to be paid; and

(2) before the principal serves the broker with a written rejection of the oral agreement, the broker either effects the transfer or sale or, in good faith, enters negotiations with a prospective party who later effects the transfer or sale.

N.J.S.A. 25:1-169(d). Such notice must be served personally or by registered or certified mail.

This statute was recently addressed by the New Jersey Appellate Division in Coldwell Banker Commercial/Feist & Feist Realty v. Blancke P.W. LLC. In that case, two commercial real estate brokers, working together, failed to obtain a written broker agreement with the owner of property. The property owner was interested in finding a long-term tenant for the property. Despite the lack of a written broker agreement, the brokers found the property owner a long-term tenant. While the parties were negotiating the lease, the brokers discussed with the property owner that their commission would be a total of five percent and that they expected further commission in the event of lease renewals. A few days after this conversation, the brokers sent the property owner a letter by regular mail and facsimile confirming their oral agreement for a five percent commission.

The property owner refused to sign a written broker agreement until the lease was finalized. The property owner

indicated that until the lease was signed it did not know the terms or the financial conditions of the lease, which the owner considered to be material information needed to enter into a commission agreement. After the lease was signed, the property owner refused to pay the brokers a five percent commission.

The court held that absolute strict compliance with the statute was necessary. The court found that the letter was sent by the brokers to the property owner within 5 days of the oral agreement, but it was sent by regular mail and facsimile. That was not good enough because the statute requires the notice to be served by personal service or registered or certified mail. The court held that the brokers did not comply with the statute's requirements and, therefore, their commission was not protected.

Moreover, the court found that the notice itself was deficient because it did not include all of the material terms of the agreement. The brokers did not include in the letter when the commission would be payable. The court held that all important terms must be included in the letter.

The court noted that to compel the brokers to forego their entire commission because their notice failed to comply with the statute seemed harsh but, the brokers resisted efforts to settle the case with the property owner. However, the Appellate

Division found that under the specific facts of the case, the court would allow the brokers to recover a reasonable amount of money for their services under a "quantum meruit" theory.

In conclusion, it is important to obtain a written broker agreement signed by the property owner. However, a broker may rely on an oral agreement if he or she complies fully with the statute. Notice must be sent to the property owner within five days of the oral agreement, it must reference the oral agreement and include all of the material terms of the agreement. The notice must be sent by personal service, registered or certified mail. Notice by facsimile is not acceptable.

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