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THERE ARE USUALLY THREE PARTIES to a real estate transaction; a seller, a buyer, and a real estate broker. The real estate broker is the middleman whose duty is to bring the buyer and the seller together. Ordinarily the real estate broker represents the vendor in that he has usually signed a listing contract to sell the vendor's home.

A *broker* has been defined as one who is employed in handling the sale, purchase, or exchange of land for a commission. Section 4735.01 of the Ohio Revised Code defines a real estate broker as: [1]

> . . . any person, partnership, association or corporation, foreign or domestic, . . . who advertises or holds himself, itself, or themselves out as engaged in the business of selling, exchanging, purchasing, renting or leasing real estate, or assists or directs in the procuring of prospects or the negotiation or closing of any transaction, other than mortgage financing, which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate. . . .

The broker plays a significant role in the sale of property. It is he who guides the sale from beginning to end. Without the services of a real estate broker, most sales would never materialize. In order to understand the importance of a real estate broker, we must first examine a typical real estate transaction.

Qualifications for a Broker

Before we do this, however, let us examine the qualifications of a broker. In order to become a licensed real estate broker (for example, in the State of Ohio) one must have been associated as a salesman with a licensed real estate broker for at least two years, or had at least two years full-time experience in a real estate business or service. In either case he must have had sufficient experience to qualify him for the broker's examination. Each applicant is then examined in the principles of real estate brokerage, the duties of real estate brokers and real estate salesmen, knowledge of real estate transactions and instruments, and the canons of business ethics pertaining thereto.[2] The requirements of examination may be waived in the case of a non-resident real estate broker from a state which has similar requirements, and which similarly extends recognition to licensed real estate salesmen and brokers of the State of Ohio.[3]

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1 Ohio Rev. Code § 4735.01(a).

2 *Ibid.* § 4735.07.

3 *Id.*

In Ohio, a real estate Commission has been created, consisting of three members with at least ten years' experience in the real estate business; such experience having been acquired immediately prior to the member's appointment to the board.[4] One of the principal duties of the Commission is to conduct the real estate examinations to determine the qualifications of applicants for the brokerage license.[5]

All fifty states of the United States, and the District of Columbia, and four provinces in Canada, have real estate license laws. The purpose of these laws is to protect the public against unscrupulous real estate brokers. As stated in its study handbook for prospective examinees:

> The policy of the Ohio Real Estate Commission is to administer the law in a fair, impartial and unbiased manner in the "interest of the public, and also to protect the broker insofar as his interest may appear. It is not the intent, neither is it the desire, nor the purpose of the Ohio Real Estate Commission, to prevent any honest person from acting as a real estate broker as a real estate salesman engaging in the real estate business." [6]

This policy statement shows that real estate license laws are enacted primarily to protect the public from brokers who tend to operate illegally, and not to impede the operations of honest brokers.

A Typical Transaction

Having determined that brokers must be properly qualified and licensed before they can begin doing business, let us examine a typical real estate transaction.

The real estate broker offers a service to the public. That service is his ability to sell a home at a price agreeable to both buyer and seller. In order to sell a home, the broker must first secure a listing. A *listing* is a written or oral agreement between the owner and the broker whereby the broker agrees to sell or lease real estate, for a consideration. The consideration is usually expressed in terms of a certain percent of the selling price. Thus the typical listing agreement would read:

> I agree to pay the Broker six percent of the selling price in the event that during the period of this contract Broker secures a purchaser ready, able and willing to purchase said property on the above terms, or at any other price or terms acceptable to me, or said property is sold or exchanged or leased by said Broker or any other person including myself. I agree to pay Broker said percent of the listing price if I withdraw said property from sale or exchange or otherwise prevent performance hereunder by Broker. I agree to

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[4] *Id.* § 4735.03.

[5] *Id.* § 4735.07.

[6] Principles of Real Estate Practice Including Canons on Business Ethics Pertinent Thereto, 4 (Dept. of Commerce, State of Ohio, 1969).

> pay Broker six percent of the selling price if said property is sold or exchanged within three months after the termination of the contract to any person with whom broker has negotiated or to whose attention he has called said property and whose name and address has, during the life hereof, been submitted to me in writing personally or by mail to me at my address given below, in which cases broker shall be conclusively deemed the procuring cause of such sale or lease or exchange to such person.[7]

Thus, from the listing agreement the broker would be entitled to a six percent commission if he finds a buyer who is ready, able and willing to purchase the seller's property.

What constitutes a ready, able, and willing buyer has been the subject of much real estate litigation. The word "able" in this phrase means one who is financially able. Thus, the purchaser must be able to secure the proper funds to complete the transaction within the time stated in the contract.[8] It is satisfactory if the purchaser is able to secure the required funds on reasonable notice.[9] A purchaser is classified as "able" when he has arranged with a mortgage company to loan to him the necessary funds with which to purchase the property. [10]

A "willing" buyer has been defined as one who is willing to consummate a binding contract for the sale of the particular property. When a purchaser is willing to make an oral agreement to purchase property, but will not make a written one, courts have held that the broker is not entitled to his commission because an oral contract can not be enforced. A "ready" buyer is one who is "ready" to enter a contract *immediately,* and not some time in the future.

Sometimes the sailing is not smooth for the broker who has brought a ready, able, and willing buyer together with a seller. Although he is entitled to commission at this point, provided a valid binding contract has been entered into by the parties, ofttimes the deals will not be consummated for one reason or another. It has been held in the following situations that the broker is still entitled to his commission: where the deal did not materialize because of certain defects in the owner's title,[11] when after the agreement has been closed the parties later agree to cancel the contract,[12] where the seller's wife refuses to sign the deed,[13] and when the seller is not able to deliver the possession of the property within a reasonable period of time.[14]

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7 Friedman, Handbook of Real Estate Forms, 31 (1966).

8 Pellaton v. Brunski, 69 Cal. App. 301, 231 P. 583 (1924).

9 Perper v. Brunski, 160 Fla. 447, 35 S.2d 387 (1948).

10 Schaaf v. Iba, 73 Ohio L. Abs. 46, 136 N.E.2d 727 (1955).

11 Triplett v. Feasal, 105 Kan. 179, 182 P. 551 (1919).

12 Steward v. Brock, 60 N.M. 216, 290 P.2d 682 (1955).

13 Pliler N. Thompson, 84 Okla. 200, 202 P. 1016 (1922).

14 Kratovil, Real Estate Law, 92 (Prentice-Hall, 4th ed. 1964).

Financing

It must be stated here that there are other matters that must be taken care of before the deal is considered closed. First, it must be determined what type of deal the parties have in terms of financing. Is it a cash deal, a conventional deal, an F.H.A. deal, a V.A. deal, or an assumption? A *cash* deal is one in which the buyer pays cash for the property, obtaining no mortgage. A *conventional* deal is one where the buyer obtains a mortgage loan to secure part of the purchase price when such mortgage has no guarantee by a government agency in case of default. An *F.H.A.* deal is one in which the mortgage loan is guaranteed by the Federal Housing Authority. A *V.A.* deal is one where the mortgage loan is guaranteed by the Veterans Administration. Such loans are available only for veterans or their survivors. Finally we have the *assumption* loan, where the buyer agrees to assume all the liabilities of the seller, including the interest rate in existence at the time the seller originally made the loan.

The F.H.A. and V.A. deals usually require that the seller pay a certain number of points to the lender in order that the buyer secure a loan. Points are demanded by the lending institution in order that it may receive the desired yield on its investment. A *point* is usually one per cent of the mortgage balance. The number of points to be charged is set by the lender, and usually depends on the "tightness" of money in the economy. Ofttimes, before the V.A. or F.H.A. will guarantee a loan they will require that certain repairs be made to the home. This expense is usually borne by the seller.

Representing the buyer, an attorney must check for evidence of title as well as possible encroachments. A chattel lien check should also be made when chattels are included in the sale of the property. Further checks should be made for possible violations of City Ordinances and housing codes. Finally, before closing the deal the purchaser should make a careful physical check of the property to determine such matters as existing leaseholders, unrecorded easements, or recent repairs that might indicate mechanics' liens.

Closing the Transaction

The contract of sale should always fix a date for closing, at which time the deed is to be delivered and the balance of the purchase price paid. Attorneys for both buyer and seller should notify the escrow agent to send them a copy of the closing statement. This is necessary to insure that the entire transaction can be checked to see if a client has properly been credited with certain allowances such as insurance, taxes, and rents. Escrow expenses are usually shared equally by the parties. The buyer is usually credited with the following items: (1)

earnest money, (2) assumption of an existing mortgage if applicable, (3) unearned rents that have been collected by the seller, and (4) taxes, since taxes are always six months behind. The seller is usually credited with: (1) the purchase price, (2) unearned insurance premiums, and (3) any items paid by the seller in advance, such as water tax, prepayment on taxes, and insurance.