

Listing Appointments

By: Catherine Pendergast

You are on a listing appointment. While touring the house so you can prepare a CMA for the sellers you ask why they are moving, what they owe on the property and what they think it is worth. They tell you that due to health problems they need one floor living, they have no mortgage and a quick sale is more important than realizing every dollar they may be able to get out of the home. You tell them you will present your CMA to them the next day and can go over some required paperwork at that time.

Do you realize that right now you are in what is referred to as the “solicitation period”? What is that?

It is the period of time in which you are soliciting a buyer or seller without expectation of compensation. It is comparable to a job interview – you don’t expect to get paid for the interview (listing appointment), you expect to get paid for the work you do if you are hired (market and sell the home after it is listed).

Commission rules allow a licensee to provide the client level service of a free CMA during the solicitation period to either a buyer or seller. Once brokerage services are offered, with the expectation of compensation (e.g. showing a property or listing a property for sale), a licensee must have a written brokerage agreement to provide client level service. In the absence of a written brokerage agreement a licensee is presumed to be a transaction broker and cannot provide client-level services, including a CMA.

Continuing with the scenario above, the next day sellers call you to tell you that they decided to list their home with someone else. You are not pleased, but there is always a silver lining and, in this case, it is that you are working with buyer clients that may be interested in this home.

In this scenario the licensee did not present the ***Real Estate Brokerage Relationships Form*** which is required to be provided to consumers when there is substantive communication regarding a real estate transaction with a prospective buyer or seller, as set forth in statute 32 M.R.S.A. § 13279; it may also be described as a warning to consumers not to reveal confidential information before an agent-client relationship is created through a written agreement for representation.

Did the sellers in our scenario understand that they were giving you confidential information about their motivation and price that you would be **required** to share with buyer clients if they did not list their property with you? If they did understand, would they have told you? Likely not.

Why did you ask for the information in the first place? Does the seller’s motivation affect the CMA? No. A CMA is the market value determined by comparable listings and sales. Sellers may decide to list under or over market value based on their circumstances.

Sometimes sellers provide licensees with confidential information at a listing appointment without being asked. Licensees are professionals and should remind consumers of their Real Estate Brokerage Relationships Form discussion warning them against revealing such information.

Is there a way to go to a listing appointment and keep confidential information that may be learned confidential? Yes! Consumers unwilling to commit to a licensee exclusively may agree to a limited agreement (e.g. non-exclusive or for a short duration) to enable a licensee to provide client-level services.

It's That Time of Year – Inactive License Status

This time of year, we receive many calls from licensees that want to put their license on “hold” or “limbo”. These statuses do not exist; what they usually want is to transfer their license to “inactive” status. The inactive license status is often misunderstood. An inactive license is an actual license with an expiration date, and it must be renewed. However, inactive status means that you are not affiliated with an agency and cannot participate in real estate brokerage activities. In order to have an inactive license, you must submit a Change of License Application requesting a change in status, along with a \$20 fee. The license will be emailed to your email address on file with the Commission.

There is a benefit to maintaining an inactive license for up to six years as the license can be activated by completing continuing education courses; after six years licensee is required to pass the Maine Law Exam to qualify for the license. Sales agents should be wary of putting their license in this status as it affects their ability to meet the requirements of the associate broker license.