

Real Estate Sales Commissions: When Are They Earned?

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When someone is interested in buying or selling real property, the first step they take is to talk to a real estate broker or agent. Real estate brokers and agents provide invaluable services and advice to clients such as how to maximize sales price, find the best value, market the property, negotiate with other parties and/or their agents, and prepare offers and counteroffers. In return for these services, the real estate professional receives a commission that is usually based on the final sales price and paid at the close of escrow. Historically, if there is no closing, then all of the time and effort put in by the real estate agent on that transaction may be lost. However, in the 2009 case of RC Royal Development and Realty Corporation v. Standard Pacific Corporation (“RC v. StanPac”), the 2nd District Court of Appeals weighed in on the issue of whether or not a commission is earned if a transaction is terminated before the close of escrow.

In RC v. StanPac, RC was a real estate broker who entered into an agency agreement with StanPac to help StanPac locate property to purchase and develop. Under the agency agreement, StanPac agreed to pay RC a commission of 1.5% of the gross sales price for the property. Specifically, the agency agreement stated, “RC shall be entitled to receive a brokerage commission, to be paid by [StanPac], . . . as compensation for services, in the event that the Property is purchased by [StanPac] within one (1) year of the date of this Agreement.” A “purchase” was defined as “any and all acquisitions of any direct or indirect beneficial interest in the Property”

RC then brokered a deal for StanPac to purchase two separate parcels from LPC Union Apartments, L.P. (“LPC”) for \$116 million. StanPac and LPC entered into a purchase agreement and opened an escrow into which StanPac deposited a total of \$6 million toward the purchase price. The close of escrow was conditioned on, among other things, the issuance of a temporary certificate of occupancy to StanPac. StanPac failed to obtain a temporary certificate of occupancy. Approximately 1 year after the contract was signed, StanPac and LPC agreed to terminate the buy-sell contract and the escrow.

RC demanded its commission even though the transaction was terminated and StanPac refused to pay the commission because escrow did not close. The Los Angeles County District Court agreed with StanPac finding that StanPac did not receive a beneficial interest in the property because there were contingencies and conditions that had not been removed prior to termination, and thus the commission was not due and payable.

However, the decision was appealed and the 2nd District Court of Appeals reversed the trial court decision. Citing various California Supreme Court decisions, the 2nd District Court of Appeals held that the beneficial interest was obtained by StanPac when the buy-sell agreement was signed by both parties. Based on the language in the underlying buy-sell agreement, the court determined that the fact that the contingencies were not completely removed and that the escrow did not close only affected the timing for payment of the commission. In other words, the commission was earned when the buy-sell agreement was signed and not at the close of escrow. The court determined that the commission was still due and payable even though the escrow did not close.

Ultimately, the outcome of the RC v. StanPac case should serve as notice to buyers, sellers and agents to carefully review and understand the sales commission provisions in their real estate agency agreements prior to execution. It is important that the parties discuss and agree upon when the sales commission is earned and payable and that the real estate agency agreement correctly reflects that understanding. If the parties have a clear understanding on this point, then they should be able to avoid ending up in a lawsuit over the sales commission.

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