



The Voice of Real Estate in North Carolina

Is Commission Due When Seller Gets Cold Feet?

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QUESTION: I listed a residential property for sale. After several months, another broker submitted a full price offer with no financing contingency. I forwarded the offer on to my seller-client and was surprised when he didn't immediately send it back fully executed. When I called to inquire, I learned that the seller was having second thoughts and no longer wanted to sell his property. If no transaction results, am I still entitled to a commission? If so, when is that commission due?

ANSWER: The Compensation paragraph of the Exclusive Right To Sell Listing Agreement (standard form 101) makes it clear that the fee of the listing agent is considered "earned" if a ready, willing and able buyer is procured by the listing firm, or by anyone else, during the term of the listing agreement at the price and on the terms set forth in the listing agreement. Once earned, the listing firm's fee is "due and payable" at the earlier of: (1) closing; (2) the seller's failure to sell the property (including the seller's refusal to sign an offer to purchase the property at the price stated in the listing agreement); or (3) the seller's breach of the listing agreement. This means that if your seller refuses to sign a full-price and otherwise acceptable offer, you are entitled to your commission at the time of that refusal.

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