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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, Realtor® associations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters throughout Oregon and Washington.

Limited Service Representation – Part II

Among other factors, increased competition and the rise of internet commerce have led to the emergence of new business models in many industries, including the real estate profession.

Some brokerages have been engaging in representation based upon an “a la carte menu” of services at predetermined rates, commonly referred to as limited service. For example, brokerages may place a listing into a multiple listing service and, by contract, provide no additional services unless requested by the client.

As discussed in a previous article, facilitating transactions with limited service sellers creates a number of important considerations, both for buyers' and sellers' brokers.

Limited service brokers should have a clear agreement as to the services that will and will not be provided to the client. In addition, it is important to specify to buyers' brokers the protocol for negotiating directly with the seller and whether additional commission arrangements may be discussed. Hypothetically, a limited service listing could provide for a commission of \$100 with a provision that the buyer's broker may negotiate additional compensation directly with the seller.

When handling limited service transactions, the buyer's broker should clearly disclose the nature of their agency representation to all parties. If negotiating additional compensation with a limited service seller per the directive of the listing broker, a compensation agreement may be appropriate.

On the national front, some states, including Texas, Michigan, and Illinois have attempted to require minimum levels of service through legislation and/or the adoption of new administrative rules for licensees. Meanwhile, the National Association of Realtors is considering the development of a single, uniform policy governing the display of MLS data on the internet.

Recently, the U.S. Justice Department and the Federal Trade Commission have issued statements warning that placing certain limitations on access to listings may be considered an

anti-competitive trade practice. Opponents of the limitations argue that such practices artificially maintain a higher commission rate by limiting access to multiple listing services. According to Gina Talamona, a spokeswoman for the Justice Department, “The Antitrust Division is investigating the potential competitive impact of certain rules involving the display of residential real estate data over the Internet.”

Presently in Oregon, there is no requirement for minimum levels of service within an agency relationship. As well, Oregon Revised Statute 696, Section 840 - entitled *Compensation and agency relationships* - provides as follows: The payment of compensation or the obligation to pay compensation to a real estate licensee by the seller or the buyer is not necessarily determinative of a particular agency relationship....Nothing in this section shall prevent the parties from selecting a relationship not specifically prohibited by [Oregon law].”

This statute appears to form a basis for the provision of limited service representation in Oregon. As such, limited service representation is an option for both consumers and brokers, and to the extent utilized, will impact the manner in which both listing and selling brokers deal with each other and their respective clients. Stay tuned for further developments.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.