

Earning Greater Brokerage Commissions by Understanding the Law by The Law Firm of Adam Leitman Bailey, P.C.

A Broker May Collect a Commission Based on an Oral Agreement Between a Seller and Broker

* Even though this is the law, never rely on an oral agreement when a written agreement can be secured. Otherwise, it is your word against the seller's word and this may not be a risk you want to undertake.

The General Rule is that a Broker Who Produces a Purchaser who is Ready, Willing, and Able to Complete the Transaction upon the Seller's Terms has Earned his or her Commission

* Parties to a brokerage agreement are free to add whatever conditions they may wish to their agreement, including a condition that the broker is deemed to have earned his commission only after title to the property is conveyed.

Draft a Contract that Enables you to Earn a Commission Without Obstacles

* The agreement should state without conditions that commission must be paid once a willing, ready and able buyer is secured.

* Note that under New York Law, if there is any doubt or uncertainty as to the meaning of the disputed language in the brokerage agreement, all ambiguity must be resolved against the broker who prepared it.

* If you can avoid it, a commission due to the broker should not be made conditional on either the title of closing or when a contract is signed. Absent these or any other limiting conditions, the commission would be due when the broker produced a prospective buyer who is ready, willing and able to purchase the property.

A Contract Must Be Signed for a Seller to be at Fault or in Default of a Commission Agreement

* Where sale of real estate fails due to the seller's fault or default, a broker is entitled to the commission. (Unless the brokerage agreement explicitly provides that the commission is due when "title passes", not merely when the broker has obtained a prospective buyer.) In light of such a provision the rule would apply only if the seller and the broker's prospective buyer had already entered a sales contract, and the seller's "fault" or "default" within the meaning of the rule, would have reference solely to a breach of that sales contract.

Documents Should Be Collected by the Broker as Soon as Possible to Demonstrate that a Buyer is "Able" to Purchase the Property

* For example, monies necessary for the down-payment including bank statements.

* For example, the bank's letter granting the mortgage approval based on "income, credit and assets."