

### PARTY TIME

No, your man on the legal corner is not referring to the upcoming holiday season, nor am I suggesting that we do not socialize enough. Who wants to socialize with a lawyer anyway? Rather, I would like to focus on parties to listing agreements.

The REIN listing agreement presumes that you are obtaining the signatures of all of the parties necessary to sell the property. Indeed, VREB has regulations that would prevent you from advertising and offering property where you do not have the permission of the (true) owner to do so, and without looking I am sure it violates the Code of Ethics also. Imagine that -- you can't advertise or sell property without the permission of the owner -- what is the world coming to?

But, I digress. Our real questions: how do you know who should sign and what are the consequences if you do not obtain the signatures of the correct and necessary parties?

Realistically, you rely on what you are told. Truly, the only way to determine who owns any particular piece of property is to have a title examination performed and obtain a legal opinion as to the state of that title from an attorney. Now, I feel quite certain that you are not inclined to explain politely to that \$350,000 York County listing prospect across the kitchen table that you can't quite take their listing until your lawyer has verified they really own the property. Not happening, nor should it.

Consequently, all you can do is accept what the client tells you and pay attention to information you learn during the course of obtaining and offering the listing. So, if a married couple represents to you that they own the house and you have no information that would lead a reasonably prudent agent to suspect otherwise, then I think you are perfectly okay to take that listing and move forward. However, if you take a listing from one child purporting to sell her deceased mother's house, then you should be put on notice that there may well be other heirs or a will involved because that is more often

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than not the case. Likewise, if you check tax records and see owners other than what you were told then you need to follow up and find out why.

If you permit a contract to be signed by the person you believed to be the owner, only to later learn he is not the only or true owner and he cannot obtain the necessary signatures from the other owners, then your seller would be in breach of contract (assuming the contract obligates the seller to provide clear title at closing). Whether you share any responsibility in that problem would likely turn on the information known or available to you as I have noted above. After all, sellers may not know any better, and they do rely on you to guide them if all that amounts to is to say “go talk to a lawyer.”

Would you have a suit for commission based upon the misrepresentation, intentional or unintentional, of ownership status by a seller? I think so. The REIN *Exclusive Right To Sell Standard Listing Agreement*, at paragraph 12(vii), says that the seller represents that he or she has the authority to sell the property. So, if that is not accurate, and the seller is unable to close after you have produced a ready, willing and able buyer, then the seller would be in breach of your listing agreement and liable for your commission.

So, the simple moral of the story is accept the sellers’ ownership representation and take the listing, but if something puts you on notice that there may be other owners then you should exercise due diligence in an attempt to ascertain and contract with them: (a) because you need to protect your client if they truly do not know any better, and (b) so you can protect your right to a commission.

If you would like to invite the author to a party (or if you have questions concerning this topic, or suggestions for future topics), please e-mail me at [bdlytle@lytlelaw.com](mailto:bdlytle@lytlelaw.com).