

## Commissions After Expiration of Exclusive Listing

**Offer accepted during listing period.** Every REALTOR® who gets a signed exclusive listing agreement hopes to sell the property during the exclusive listing period and earn a commission as a result. Under paragraph 3A(1) of the Residential Listing Agreement (C.A.R. Form RLA), three events must happen before compensation is due under that paragraph: 1) A ready, willing and able buyer is procured (by the listing broker, another broker or the seller); 2) The buyer's offer is accepted, and 3) The escrow closes (whether during the listing term or after).

**Offer accepted AFTER listing period.** Under paragraph 3A(2) of the RLA it is possible to earn compensation for contracts that are accepted *after* the listing period has expired. Paragraph 3A(2) protects REALTORS® from sellers who would unfairly take advantage of a licensee's time, marketing and expertise without any obligation to pay for such services or benefits by purposefully accepting offers after the listing period.

**Pre-conditions to earning compensation after expiration of listing period.** Before a licensee is entitled to a commission for a contract agreed-to *after* a listing period, several events must happen:

**First**, a time period must be entered identifying for how long the protection period or safety clause lasts. Since this clause extends the obligations under the listing, if this field is left blank, a court is likely to interpret the absence of days against the interest of the broker, and as an indication that the licensee did not intend for the entire clause to apply. The post-listing obligation applies after expiration or cancellation of the listing agreement, unless otherwise agreed. C.A.R.'s Cancellation of Listing (Form COL) identifies different scenarios in which the seller would or would not owe compensation.

**Second**, the listing broker must give the seller a list of all prospective buyers to whom the clause is intended to apply **AND** the list must be provided before the listing period expires. The purpose of the list is to let the seller know that entering into a contract with such a buyer will trigger the original broker's right to compensation. The list should also be provided to a subsequent listing broker to help prevent dual claims to compensation. C.A.R.'s Notice of Prospective Buyers/Transferees (Form NPB) may be used to timely satisfy this requirement. Note: the obligation to pay compensation applies if the prospect writes the post-listing offer through a related third party such as a trust, a wholly owned corporation or LLC.

**Third**, every prospective buyer must have met one of two criteria in order to be properly included on the list: 1) The prospective buyer must have physically entered and been shown the property. It does not matter if the property was shown by the listing broker or someone else; OR 2) The prospect must have submitted a signed, written offer on the property. While dozens or even hundreds of prospects may have entered the property during the listing and entered their names on a sign-in sheet, a prudent listing broker will trim the list to those most likely prospects before providing the names of prospective buyers to the seller. Failure to do so, and including every person who entered the property, might be interpreted as overreaching by a court.