



MEMO

To: FILE

Date: March 17, 2004

Re: When is a Florida Real Estate Broker entitled to a real estate commission as the ***procuring cause*** of a sale of property?

Summary

One of the means under which a Florida Real Estate Broker (“Broker”) would be entitled to a real estate commission is if it were the procuring cause of a sale of property. If a Broker is the procuring cause, the Broker would be entitled to a commission. In short summary, the buyer and seller must have been brought together and the sale consummated as a result of continuous negotiations of the Broker. . **Sanson v. Dutcher, Higginbotham, and Bass, Inc., 401 So.2d 913 (Fla. 4th DCA 1981)**

For a Broker to be considered the “procuring cause” of a sale, the Broker must have brought the purchaser and seller together and brought about a sale through continuous negotiations inaugurated by him unless the seller and buyer intentionally exclude the broker. **Lee Giusti Realty, Inc. v. L.D. Corporation, 603 So.2d 39 (Fla. 4th DCA 1992)**.

The following four cases are illustrative of factors that the courts utilize in determining whether or not a Broker is entitled to a commission as a consequence of being a procuring cause of a sale:

(i) **Lee Giusti Realty, Inc. v. L.D. Corporation, 603 So.2d 39 (Fla. 4th DCA 1992)**. A real estate broker sought a commission following a sale of real estate. The broker claimed that he was a procuring cause of the sale because he had shown a property to one partner of a joint venture and the purchaser was another partner in the joint venture. The court held that because the actual purchaser had no association with the broker, and the vendor had represented that there was no vendor involved, the broker was not entitled to a commission.

(ii) **Kotler v. Kroop, Inc., 354 So.2d 110 (Fla. 3d DCA 1978)**. Real estate broker sued to obtain a brokerage commission. The court held that broker was not entitled to a commission where the broker was not the procuring cause of the sale because the sale was separately negotiated between the buyer and seller with no assistance from the broker.

(iii) **Leon Realty, Inc. v. Hough, 310 So.2d 767 (Fla. 1st DCA 1975)**. Brokers brought suit against the broker who eventually sold the property to recover a real estate commission. In **Leon Realty**, the brokers had a verbal contract with the property owner to sell his property. The Brokers did not perform under the contract. The owner contacted with a second broker, the Defendant, who successfully sold the property. The court held that the first broker was not entitled to a real estate commission since the first broker neither procured, nor consummated the purchase, because they did not affect the sale as a result of continuous negotiations.

(iv) **Earnest & Stewart, Inc. v. Codina, 732 So.2d 364 (Fla. 3d DCA 1999)**. A real estate broker brought an action against the sellers and purchasers, alleging tortious interference with rights to a commission. In this case, the court held that the real estate broker's sole and simple act of telling eventual purchasers that a piece of property was for sale, did not, as a matter of law, entitle the broker to recover commission under any viable theory of broker compensability, since single act did not amount to producing ready, willing, and able purchasers of the property, or result in the broker being a procuring cause of the sale.

The **Lee** case further seems to suggest that for the Broker to be entitled to the commission, it must bring together the seller and purchaser, and not just a person associated with the seller or purchaser. Furthermore, the **Kotler** and **Leon Realty** cases suggest that where the Broker is not involved in the negotiations between the buyer and seller, it is not entitled to a commission. Finally, the **Condina** case clearly shows that the simple act of informing a potential purchaser, who eventually purchases the property, about a prospective purchase is not enough for the broker to be a procuring cause in the sale.

In conclusion, each case will be decided on the facts and circumstances, as a Broker must prove the essential elements of being a procuring cause by a preponderance of the evidence.