

Know the cost of your holdover clause fee

Joseph Richer, Toronto Star
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I'm about to sign an agreement with a real estate brokerage, but a clause in the contract says that I could still owe them a commission even after the agreement expires. Is that normal?

First of all, kudos for taking the time to thoroughly read the agreement. Too often, buyers and sellers don't take the time to understand what they're signing. Your agreement with the brokerage is a binding contract. For something as important as a real estate transaction, it's not to be taken lightly.

Now, onto your question. The clause you're asking about is known as a "holdover clause." They're included in most representation agreements with both buyers and sellers.

In general, a holdover clause protects the brokerage and states that if you enter into an agreement of purchase and sale within a specified time (the "holdover period") after the expiration of the contract, you may still need to pay commission to the brokerage. The length of time the holdover clause is active is agreed upon at the time that all the agreement terms are negotiated.

In the case of buyers, the holdover clause applies to properties that you were introduced to while you were under an agreement.

Let's say you signed a buyer representation agreement to work with a brokerage and were shown or introduced to a number of homes. But you didn't enter into a deal on a property before the agreement expired. You could then choose to work with a different brokerage, but if you buy one of those properties during the holdover period, you could also owe commission to the original brokerage.

The determining factor is when you were first introduced to or shown the property.

For sellers, the holdover clause typically applies to potential buyers who were introduced to your property or viewed it while you were under an agreement.

Let's say you signed a listing agreement with a brokerage, and your home was shown or introduced to buyers but didn't sell by the time the listing expired. You could then opt to sell privately, but if you sell your home during the holdover period to someone who had seen it while it was listed, you could still owe commission to the original brokerage.

Typically, if you list with another brokerage at an equal or higher commission amount, then the holdover does not apply. Remember to check the terms of your agreement, as holdover clauses can vary.

When selling, it doesn't matter how the buyers were introduced to your home or why they came to see the property. Whether they wandered into an open house, responded to an advertisement or even if you know them personally and they expressed an interest, the holdover clause could still apply.

However, if you were introduced to the buyer after your listing agreement expired, you would not be subject to the holdover clause in this example.

If you are concerned with the holdover clause or any other aspect of your agreement, discuss the matter with your representative, the manager or broker of record of the brokerage.

If you're still not sure, consider getting legal advice before you sign on the dotted line.

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