



Home Buying - Little Known Realtor Rule Could Cost You Thousands

By [Tom Wemett](#) | Submitted On January 18, 2010



Welcome to "One Date And You Are Married", a behind the scenes drama that plays out from time to time without buyers or sellers initially knowing what is happening. I bring this to your attention as you do have control over whether or not this happens to you. However, you need to know and pay attention to the details in order to protect yourself and protest the agent who writes the contract and helps you buy a home. Keep reading.

- Have you signed-in and toured homes during open houses?
- Have you called real estate licensees for information about listings?
- Have you toured one or more homes with one or more salesperson or broker?
- Have you provided your e-mail address over the Internet to receive listing updates?

Then you may have unknowingly "gotten married" to an agent!

"Unbelievable?", you say. Yes, but it is true. If you make contact with a real estate salesperson or broker who supplies you with information about a property or who shows you a property, they can make a claim to be paid a commission even though you purchase that property through another agent or even directly through the seller. That is right, even though you do not use that agent for a purchase of the property they showed you or gave you information about, they have a right to make a claim for a commission. You in essence have "gotten married" to that agent after one date or maybe just a handshake.

Of course you are free to use anyone you choose or no one at all to help you buy a home. But, if the home you buy was listed in a REALTOR® operated Multiple Listing System and if you were working with an agent when you learned about that home or if an agent gave you information about the home or showed you the home, that agent can make a claim to be paid a commission. They do this through REALTOR® arbitration but it could create a situation that results in you being sued for their commission plus legal costs.

"How can this be?", you ask. Blame it on the Realtor® Code of Ethics. Most real estate licensees are members of a REALTOR® Association and/or a REALTOR® run MLS (Multiple Listing Service). The term REALTOR® means a real estate licensee who is a member of NAR, the National Association of REALTORS®. As such they have to abide by the REALTOR® Code of Ethics. This is not a bad thing, really, in that you should want to do business with a real estate licensee who is professional and ethical and who agrees to practice according to a strict Code of Ethics.

However, this same Code of Ethics makes it mandatory for members to arbitrate "business disputes." The National Association of REALTORS® (NAR) Code of Ethics and Arbitration Manual, Article 17, states: "*In the event of contractual disputes or*

specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall submit the dispute to arbitration in accordance with the regulations of their Board or Boards rather than litigate the matter."

When dealing with disputes having to do with real estate commissions, the method of determining who is entitled to the commission is a concept referred to as "Procuring Cause." Or, in other words, *who started the series of uninterrupted events that led to a successful transaction*, i.e., a real estate transaction that closed? "You can see how an agent who gives you information or shows you a home has a basis for a claim for commission. They feel that they alone *started the series of uninterrupted events that led to a successful transaction* and that they should be compensated for it regardless of whether or not they actually wrote the contract or did anything else to earn said commission."

"OK, so what?" "How does that involve me?" "Is not this a REALTOR® thing?" Well, not really, because...

You may not be able to find a buyer agent of your choice if you decide to be represented. A true buyer agent who is aware of the potential problems may not want to represent you because of the possibility that they may have their compensation taken away from them after the closing.

You could be obligated to pay a buyer agent twice. If the previous licensee you contacted is awarded your buyer agent's compensation through REALTOR® Arbitration, your current agent may sue you for the compensation that was taken away from or never given to them.

You could be sued by the seller. This primarily happens where buyers purchase a property that is listed with a "limited services broker". A limited services listing is one where the listing broker provides very limited services and many times only provides access to a local Realtor® multiple listing system at a discount but then provides no other services such as presenting or negotiating offers. With such a listing, the buyer negotiates directly with the seller rather than through the listing agent, unless a buyer agent represents them. If the buyer had contact with another agent previously, but who now is getting bypassed, that agent sometimes brings an arbitration action against the limited services broker to collect the compensation that was offered through the multiple listing system. If the listing broker loses, they will probably sue the seller to recover any money lost. These sellers then may turn around and sue you, the buyer, as you were the one who created the initial problem by not using the first agent to complete the sale.

What Should You Do? Decide if you are going to use the services of a professional buyer's agent to help you purchase a home. Because if you are, you absolutely should start doing so as early in the process as possible to prevent problems for that agent in working for you. A professional buyer agent can: Help you get pre-approved for a loan; Review the home buying process with you; Get you information about the current market and homes for sale; View homes with you that are of interest; negotiate on your behalf; and follow-up with the details so that you get into your home on time and with less hassle.

You must take certain steps to protect your interest. If there is a home you actually are interested in purchasing, that you saw or found out about from a previous agent, who you do not want to use now to buy that home, you must proceed with caution. This requires that you must protect your new agent's ability to keep their commission. Or, in the event you are buying directly from a seller, protect the seller's ability to work with you without being liable for a commission.

You would need to inform the previous agent (verbally and in writing) that you no longer wish to use their services. There is a provision in the NAR Code of Ethics Arbitration Procedures that refutes the first agent's claim if it can be shown that there was either an "abandonment" or "estrangement" by the first agent. Abandonment would mean that the agent did not follow up with you or that a lot of time goes by since the agent communicated with you. Estrangement would mean that the agent, through their actions or words, made you decide not to use them.

You should make one last contact with the previous agent to end the "relationship" with them. I know, you may not have signed anything and thus feel that you have no obligation to the previous agent and technically no actual relationship with that agent. It does not matter, that agent may think you are his buyer and that a relationship exists. End it nicely but firmly. Tell them in writing why you do not want to use their services. Make sure to give your new agent or the seller, if you are buying direct, a copy of the letter and make sure you do not have any further contact with the previous agent.

There are legitimate reasons why buyers do not or may not want to work with a particular agent after seeing one or more homes with them or getting information about various homes from them. Perhaps the agent shows incompetence or inexperience. Perhaps they just do not seem attuned to your needs. Or, maybe their personalities just plain clash with yours or they said or did something that you did not like. If that is the case, document such situations and keep a record of them for future reference just in case a problem does arise, end the relationship as noted above and go on.

However, where money is involved, sometimes greed takes over where common sense and fair play should be the norm. If you are attempting to cut an agent out of a commission to supposedly save money by buying directly from a seller or by using

another agent who will rebate some or all of their commission back to you, then expect problems. If an agent has expended time and effort on your behalf and you have continued and encouraged the relationship, you do in fact owe a certain amount of allegiance to that agent. It is the moral and ethical thing to do. To now attempt to take advantage of that agent is just plain wrong and generally you will feel that in your gut. Such a decision is generally short sighted and probably will result in a lot of grief and lead to potential financial loss. Think long and hard before taking such a route. If it is legitimate, document and end the relationship. If it is not, follow your moral instincts and do what is right. Either complete the deal with that agent or tell them what you are planning and compensate the agent in some way.

If you do plan on being in contact with several real estate agents:

- Do not share confidential information about you and your ability to purchase a home only with the licensee whom you choose to represent you as a buyer's agent. If you share this information with other real estate licensees, they potentially could use this information against you if they represent the seller of a home that you want to buy.
- Do not get too involved with any real estate license until you are sure that is the person you wish to use to represent you in purchasing a home. The more deeply involved you get and the more homes you see with one real estate licensee, the easier it becomes for that licensee to claim to be the "procuring cause" on a future purchase by you of a property that you learned about or saw through that licensee, whether you purchase that home through another agent or directly from the seller.
- Do not sign any written documents, except mandatory agency disclosures, with any real estate licensee except the one you choose to be your buyer agent.
- Do make it very clear from the beginning that you are interviewing several agents before deciding to use the services of one exclusively. Sellers generally interview two or three or more listing agents asking for proposals and marketing plans before they choose which agent to use. You can do the same, as long as you do so cautiously.
- Do not leave your e-mail address, phone number, or mailing address with any real estate company or licensee. To do so invites more aggressive and potentially irritating marketing efforts by such companies or licensees and potentially begins the process of a real estate licensee being able to claim "procuring cause". If you are asked to "sign-in" at an open house, give your name, but do not leave your address or phone number. Take the licensee's business card and say that if you are interested further you will contact them.
- Do not continue or encourage the development of a relationship with a real estate salesperson who you probably do not want to actually buy your home from in the future. It is unfair to the agent and may lead to problems later for you or your new agent. If a real estate licensee that you are pretty sure you do not want to use as your buyer agent contacts you, politely but firmly ask them to stop contacting you. Ask them to remove your phone number or e-mail address from their records. The more you encourage the development of a relationship with one real estate licensee, the more difficult it becomes for you in the future if you decide to hire another licensee as your buyer agent.

Purchasing a home really is a complex process. Understanding real estate relationships is even more confusing. I hope that this behind-the-scene look has not confused you even more. Most real estate agents do not understand it so why should you? Do not be afraid to ask for further explanation or example if you do not quite understand it.

Tom Wemett became a full time real estate broker in NY State in 1973. He stopped taking listings in 1992 and started representing home buyers only, which he continues to do in the Albany, NY, Capital Region.

He has earned several real estate certifications including CRS (Certified Residential Specialist), GRI (Graduate Realtor Institute), CEBA (Certified Exclusive Buyer Agent), ABR (Accredited Buyer Representative), CBR (Certified Buyer Representative), CBA (Certified Buyer Agent), CHEC (Certified Homeowner Educator and Counselor), and CSP (Certified New Home Sales Professional).

He is a founding member of NAEBA, the National Association of Exclusive Buyer Agents and served as the NAEBA National President in 2003. Tom can be reached by email by clicking here: ["Contact Me Here"](#)

More in-depth information about home buying is available at "<http://www.home-buying-action-guide.com> [<http://home-buying-action-guide.com>]" including a free eBook, "An Insiders Guide to Avoiding Costly Mistakes When Buying a Home".

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