

Realtors, the “Procurring Cause”, and ... Fairness!

By: Carlos J. Reyes, Esq.

Realtors have been the back-bone of Florida’s real estate market for decades. They invest time and effort in education, spend hours making cold calls looking for listings, and work days on-end tracking down sellers to sign listing agreements or find buyers to represent. And, despite the internet age, realtors continue to add what seems to be an infinity of hours on the internet searching or mileage to their cars showing property after property. There is no doubt that “good realtors” earn their commission. At the same time, most property owners are sensible, fair, and appreciate what a good realtor can bring to the table. Yet, not surprisingly, some realtors and owners routinely find themselves at odds when it comes time to paying commissions.

I originally thought about this dilemma when a realtor was referred to me years ago in regards to a situation she was dealing with and whether she was entitled to her commission. She asked me whether her efforts at bringing together a buyer and seller entitled her to a commission when the parties fail to enter into contract immediately, but wait and later enter into a contract that excludes the realtors’ commission. **Simply answered, yes – the realtor is entitled to their commission!**

The key factor when analyzing this question is whether the realtor was the “procurring cause” of the transaction. The most recent and pertinent case restating and defining the “procurring cause” doctrine can be found in the 2005 Florida Supreme Court case of *Rotemi Realty, Inc. v. Act Realty Co., Inc.*, 911 So. 2d 1181 (Fla. 2005). The *Rotemi* case makes clear that absent an exclusive listing agreement, the procuring cause is said to occur where the agent has: 1) initiated negotiations by doing affirmative acts that bring a buyer and seller together; and 2) remains involved in the negotiations, unless intentionally excluded by the parties. Under these circumstances, you are entitled to the commission. Further, the *Rotemi* case boils down the question to one forthright value - Fairness. Holding the “mirror of fairness” up to those owners who oppose paying a commission - when analyzing and reviewing how and why a parcel of real estate or property was sold – shines a light of truth which ultimately is hard to deny.

Good realtors earn their commission. Good owners and sellers realize that a realtors’ marketing and property exposure efforts can bring them a fast contract. When you run into a “bad owner/seller” - despite being the “procurring cause” of the sale - the courts can and will recognize the realtor’s commission. It’s only fair.

Assembling the right team to handle each of the critical functions of the transaction – realtor, lender, closing attorney – is critical to increase the odds of experiencing a smooth and enjoyable lead up to and through closing. Feel free to call **Reyes Title Services** (at the Reyes Law Group) to assist you by providing pragmatic and practical counseling, advice, and delivering quality legal work, due diligence review, and title insurance coverage to help the parties close that next “American Dream” or investment property.

The hiring of a lawyer is an important decision that should not be based solely upon advertisement. Before you decide, ask us to send you free information about our qualifications.



Reyes Law Group is located in South Florida and serves the Broward, Miami-Dade, and Palm Beach county areas at 150 South Pine Island Road, Suite 210, Plantation, FL 33324. For more information about the **Reyes Law Group**, visit their website at www.reyeslegal.com or contact them at (954) 369-1993 to schedule a free consultation to review your legal needs.

Se Habla Español.

July 2018