

Use Precise Draftsmanship to Avoid or Obtain a Brokerage Commission Payment

A “plaintiff entered into an exclusive listing agreement with the defendant, Deal Lake Village Gardens, LLC to broker a sale of the defendant’s apartment complex. The agreement included the following provision: “If a sale or exchange is consummated after the termination of this agreement to or on behalf of a party who was introduced to the property by [plaintiff], [plaintiff] will also be entitled to a full commission.” writes Gary M. Albrecht in Cole Schotz’ *Real Estate & Construction Law*.

“The property was sold, but not until after the term of the plaintiff’s exclusive listing expired. At the trial court level, the plaintiff argued that even though the property was sold after the exclusive listing agreement expired and the defendant had hired a new broker, it had earned a commission because it had introduced a principal of the purchaser to the property while its exclusive listing agreement was in effect. The trial court rejected the plaintiff’s claim, but its reasoning came under the Appellate Division’s scrutiny.”

“When negotiating exclusive listing agreements or other forms of commission agreements, whether on the side of a property owner or broker, any right to a commission after a broker’s agency has expired must be discussed and memorialized in a contract to avoid a similar fate to the parties of this case, which in the case of the defendant, may include the payment of two full commissions (in addition to legal fees) depending upon the disposition of the remanded case at the trial court.”

Read the article.