

THE RELATIONSHIP BETWEEN LAND SURVEYORS AND REAL ESTATE AGENTS

INTRO

I have been a Florida licensed real estate agent/broker for over 26 years, and my better half is a licensed surveyor in Florida. And we manage to live together, eat together and work together peacefully. Most recently I have been working at his survey company, in the field as well as in the office. I run a total station and data collector, and draft the survey maps, answer phones, invoice, assist in office management and obtaining new clients. I'm aware of the "headaches" surveyors encounter working professionally with real estate agents. Hopefully I can shed some light on what real estate practitioners do and why, and assist surveyors to maintain successful business relationships with real estate agents.

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THE COMMISSION

First, let's debunk the fallacy that all real estate agents are wealthy and that they walk away from a closing with the total commission of the sales price in one pocket. The actual percentage amount of the real estate commission is negotiable, not set or fixed. Just like a surveyor's fees, that's not to say any particular agent will be open to modification of that commission. Many commissions were negotiable in the boom times of an exploding market, but the brokerage and agent could also eliminate or reduce some of their marketing expenses. Many listings never made it into the Multiple Listing Service; agents in the same office had buyers standing in line to purchase. So agents were acceptable to negotiated commissions. Now, in today's depressed real estate market, a reduced commission is more likely in an effort to reduce the overall costs to buyers. Recently many brokerages have turned to flat-fee-for-services, each part of the transaction paid for when completed rather than waiting for a closing to occur, also giving a principal the option of using only certain services provided by the brokerage/agent.

There are a lot of expenses flowing out of the agent's pockets before it comes back in, and once in awhile, the agent's costs are never recovered.

Advertising is one of the greatest expenses for listing agents. Sellers still expect to see their listing in the newspapers and the glossy real estate circulars. In my location, a 1/4 page ad in a color glossy publication costs approximately \$300 an issue, weekly or bi-weekly. Most agents pay their broker for newspaper ads with multiple listings featured. That can cost \$500 to \$1000 or more, per Saturday or Sunday ad, from 1/2 page to a full page ad.

My national and state association dues and local board dues are currently \$483/year. License renewal runs almost \$100 every 2 years as a broker. My occupational license is \$40/year. There are required continuing education class fees (14 hours every two years), and many agents incur additional fees to become accredited in specialized fields of real estate. The annual MLS (Multiple Listing Service) fees are close to \$400, depending on location. Leases for electronic lock-box keys run approximately \$100/year and the range to purchase a lock box for each listing is \$75-\$125.

If open houses are held, any advertising and/or refreshments served are the expense of the individual agent. Automobile mileage is the expense of the individual agent and the costs, including expanded auto insurance coverage, get very expensive for a selling agent driving clients to see listings. There are always a few lunches and dinners involved in those trips as well. Eventually, most agents give a closing gift for the buyer, easily \$50-\$100.

The brokerage usually bought the metal yard signs that ran about \$10 to 15 each and each agent is responsible for their own attached rider sign with their individual names, at about \$10 each. Using wooden or laminate sign posts raises the cost.

Most agents have their own web sites with expenses of \$500 to \$1500 for initial set up, and monthly maintenance fees of \$50 to \$100.

All commissions are gross and almost every agent is an independent contractor, so each pays 13% in self-employment tax to Uncle Sam and additional income tax depending on tax bracket. Being self employed allows agents to write off many expenses. There are no benefits; no paid vacations, no company health insurance, no long term care, no disability insurance, no retirement provided by the employer. Those expenses are the agent's. Agents must be flexible and their time is the principal's time. Weekends and evening appointments are the norm.

There can be more and higher expenses, also, depending how experienced the agent is. An experienced agent should also bring in more income and can thereby afford to spend more, much of which goes to self-promotion to obtain more business.

There are a few scenarios that determine how a commission, using an example of 6% here, is disbursed.

Listing agent from Brokerage A
Selling agent from Brokerage A
Selling agent from Brokerage B

If the listing and selling agent are both from A or if the listing and selling agent are the same person.....then brokerage A gets 6%. That brokerage will have an agreement as to what the agent receives.....very typically a split of 60/40 or 75/25 or 80/20 with all but newly licensed agents which usually start out at 50/50, meaning the agent gets 60% of a 6% commission and the brokerage gets 40%, etc.

If the listing agent is from A, and the selling agent is from B, then typically 3% goes to broker A and 3% goes to broker B, then the broker/agent splits are disbursed. If the listing and selling agent are different people from the same brokerage, then that split is applied to the 3% for each agent.

The expenses of the agents and brokers are handled differently depending on company policy. There are many brokerages such as ReMax, where the agent just pays the broker a small fee for desk space, obtains 100% rather than a split of any commission but also pays for ALL expenses such as advertising, MLS fees, E & O (errors and omissions) insurance and franchise fees to ReMax.

Where there is a split agreement, usually the brokerage assists in paying for the advertising, may pay all E & O or just charge each agent a fee per transaction for E & O. If working for an independent broker (not a Coldwell Banker, etc) but Joe Smith Realty, there is NO franchise fee assessed to the broker or agent.

There may be additional outside licensed agent referral fees if the seller or buyer was referred to any of the above agents or brokerages; that referral fee can be as much as 25% of the commission split to the referring agent, for example. $\$100,000 \times 3\% \times 25\% = \750 .

Here is an example of how a transaction would work.

A listing agent is from ABC Realty. He has spent time researching MLS and public databases in order to prepare a CMA (comparative market analysis) to present to his potential sellers, he has procured the listing on the property, has invested in real estate advertisements and web sites on the listing. The buyer's agent is from XYZ Realty and has presented a purchase contract on behalf of the buyers. Negotiations often go back and forth for several days. Contractual time lines must be met; the purchase terms are agreed upon by all parties and signed. The agents must follow up with their respective principals. The work continues after the sale: home inspections, termite inspections, mortgage applications, repairs, title searches, SURVEYS (hopefully) and both agents are further investing time and money to assist their principals in meeting the terms of the purchase contract.

For sake of space, we'll assume there have been no hurdles in the transaction and title has been transferred at closing, and commissions are paid.

Using the example of a 6% commission, let's assume a contractually (MLS) agreed 50/50 split between ABC and XYZ brokers. The selling price is \$200,000.

ABC Broker receives \$6000
XYZ Broker receives \$6000

Let's assume an experienced agent at 80/20 and further assume both agents are on an equal "plan" so we are, from here on out, just addressing 1/2 of the total \$12,000 commission or \$6000 and all other arrangements the same for each agent. There might be a 6% franchise fee (as for ERA, Coldwell Banker, etc, for national marketing and

advertising) that is taken off the \$6000 before the ABC broker/agent split. $\$6000 \times 6\% = \360 so the split is now based on \$5640.

ABC broker retains 20% or $\$1128 \times 20\%$ tax bracket = \$902. From that amount the broker pays any brokerage advertising fees, annual corporation fees and office staff overhead, building rental space or mortgage, operating expenses, brokerage E & O, and most any normal business ownership expense you can imagine.

ABC agent retains 80% or $\$4451 \times 20\%$ tax bracket = \$3560. From that amount the agent pays annual listing fees and C.E. and dues (approx. \$1000+ annually), and more, as mentioned previously (Misc. expenses, not including vehicle, \$500+ annually), approximately \$1200 annually E & O insurance, typical glossy magazine advertising runs around \$7000 annually, personal web sites and virtual tours of listings run approximately \$2500 annually or estimated annual total of \$12,200. Let's assume 20 transactions a year which equates to \$610 per closing, an estimate of net income on this one transaction of \$2950. And that does NOT include auto or client expenses (any meals and gifts), which are major costs for a real estate agent. On some occasions, one of the principals may have been personally referred to the brokerage or agent by another licensed agent, those fees based on the commission split will cost the broker and/or agent 20-25%, as an example, deduct an average of \$1000 from \$2950, now ABC agent pockets approximately \$1950.

The average property listing (let's forget the crazy wild buying frenzy of 2003-2005 and let's not count the depressed burst bubble we are in now) is 60-120 days. Obviously agents do not devote 40 hours a week to one listing, but it is not unheard of to devote an average of 7-10 hours a week to one listing, so if you list and close in 60 days you are netting approximately $\$2950/56$ hours or \$53 an hour.

If the listing runs longer than 60 days, or there are problems during the transaction, or if there are additional expenses such as the referral fees, the hourly rate decreases. Please remember this: if the work and expenses are put forth and the property does not sell, or the contract becomes null and void before or at closing, the agent will be losing \$53 an hour for the time invested. Then, the agent's expenses are 100% and both gross and the income is 0%.

Sometimes, after spending days with potential buyers, those buyers go out looking on their own or they decide to work with another agent. There is no restitution for the agent "left behind"; although, it is becoming common for agents who work with buyers to obtain a Buyer's Agent Agreement that may protect them from disloyal principals who walk away.

In the past, probably only 1 of those 20 transactions might fall apart. Currently the market is more volatile, and I would guess 5-6 of 20 would be unsuccessful, that drops the net income more. And just a gentle reminder, this is all based on an estimated 6% commission, which is negotiable.

I hope this gives you an idea of the "wealth" of real estate agents. According to the National Association of Realtors, the average annual *gross* income of an experienced

agent is between \$32,000-\$60,000. Experienced agents can make \$150K-\$300K per year, but proportionally their expenses are greater. I would take a guess that very wealthy practitioners are about 1% to 2% of the entire group of Realtors nationally. The hours are long and often involve weekends and nights, the profession is extremely litigious, and the burnout is high. The perspective of commission percentages to the seller and buyer appear high, but there is a large misconception that the real estate agents make large incomes. It is disbursed in many directions to many parties in the transaction.

THE MIND SET OF REAL ESTATE PRACTITIONERS

I've often heard land surveyors complain that real estate agents can be difficult to deal with in general and specifically; they may seek out the lowest price they can get for a survey, they want an instant price quote, and they do not allow enough time before a scheduled closing to make the survey order anything less than a "RUSH"!

The role the agent plays in hiring services for their principals has changed over the years. I used to order the survey, and referred banks, mortgage companies, title companies, attorneys, the termite inspector, the home inspector, the repairman, the electrician, the moving companies, the telephone companies, the cable companies, the power companies, the storage companies, the pool and lawn maintenance, the country clubs, the schools, the churches, potential places of employment, the Chambers of Commerce, day care centers, hotels, airlines, and kennels. It was all about adding value to the service that you provided to your principals. This is how it came to be that the agent, and not the buyer, could be the party contacting the land surveyor.

The current market trend is for the party needing and paying for the service to make the calls and inquiries for several reasons---liability for the agent is growing. I now provide a list of 3 different service providers, disclose that the principal has the right to choose their own, and the principal makes the calls and decision.

I believe agents and title companies are beginning to realize that if the client makes the call and selection, they are relieved from liability and repercussions, especially if a closing does not occur. I hope surveyors use written agreements and work directly with the party responsible for payment instead of a middle person, the agent, title company, lender or attorney. Often the surveyor is a service provider who risks non-payment if their fees are escrowed from a closing, rather than paid upon delivery of the survey. Without a properly signed service agreement with the party responsible for paying, a third party will not usually be successful in collecting the survey fee if the transaction falls apart.

The reason the surveyor is called at the last minute for a closing is because the agent is trying to avoid unnecessary costs for the buyer until certain that a closing is going to occur. Once the loan is approved and/or the closing date is set, then time is of the essence. In fact, the closing date is called for in every purchase contract, so to miss a contractual closing date creates a null and void contract. That means every term of that contract is open for revision and/or the buyer or seller can walk away from the contract without penalty.

Real estate is a service-based business. It is also a very hectic, fast-paced business. Many terms of the purchase contract are time based....time is of the essence, there are specific deadlines that if not met will void a contract. During a real estate transaction both the buyer's and seller's prime focus are the funds. The seller wants to sell at the highest possible amount and the buyer wants to purchase at the lowest possible amount. Negotiating a contract between a buyer and seller requires great skills to be successful. The focus never shifts away from the profit or loss to either party. Therefore, that focus also becomes a concern of the agent. That includes not only the purchase price but ANY associated costs during the transaction: loan points, interest rates, inspection fees, repair work, realty fees, moving expenses and surveys...anything that has to do with the entire process. Experienced agents realize that the lowest price isn't always the best deal, and have the skills to successfully convey that fact to their client.

So, part of the perceived abruptness of real estate practitioners may come from the focus of their principals, the desire to keep costs minimal. By nature of the work, agents must stand firm, be somewhat aggressive, and need to be able to negotiate. Sometimes the personality transfers beyond the actual contract negotiations.

I've heard from surveyors who believe the survey may cause a transaction to fail, that an agent does not want their principals to know about problems a survey might uncover. That would surely be a case of concealment and cause for a complaint against a licensed real estate practitioner. I personally have never had a survey stop a closing. I've had many home inspections blow apart a contract, but never a survey. To the best of my knowledge, here and elsewhere, the survey is not a major problem for agents.

THE ISSUES BETWEEN SURVEYORS AND REAL ESTATE AGENTS

There can be difficulties facing the land surveyor who provides services to real estate professionals. I think a lot of the issues can be reduced to a lack of communication from both sides.

Most associated professions in a property transfer, such as lenders, title insurers, and real estate attorneys make an effort to obtain the referrals and services of real estate professionals. I do not have to look far to learn about regulations and practices of the mortgage, title, or closing business because those peers make great efforts to come by my office, attend any internal sales meetings, and local board meetings. They attend regularly to educate us and answer questions. They realize sharing education and knowledge makes their jobs easier. Many volunteer to conduct seminars in an individual office, local board or state level. Many write articles for state and national real estate publications. If I have questions, a quick phone call puts several lenders, title insurers, or real estate attorneys ready to assist me. That type of communication promotes excellent business relationships. They offer to meet with my clients to answer any questions they might have. And if they have a concern with anything I do, they call me and we attempt a mutual resolution.

The only profession in my area that doesn't appear to care if I or my principals understand "what they do and how they do it" is surveyors. I've never received a call

from a surveyor asking if he/she could come by my office and speak with me. I can only recall one time a surveyor was scheduled to lead a seminar at my local board. Until I worked at our own surveying business, I considered surveying as a trade and the survey as a sheet of paper which could be bought for a few hundred dollars to fulfill the requirement of the lender. There is no concentration on surveying in any of my licensing classes, nor my continuing education classes, not in any seminars, nor any of my professional publications, nor my local board seminars, nor professional marketing publications, not in the real estate advice section of my local newspaper, not in my broker's training or instruction, not at my state conventions; literally, the surveyor appears to be an invisible entity in the transaction. And in many areas of Florida I work, the title company orders the survey and it just appears at closing. Real estate agents don't understand what is involved in surveying and land surveyors didn't understand much about what real estate practitioners do.

POSSIBLE SOLUTIONS BETWEEN SURVEYORS AND REAL ESTATE AGENTS

This lack of understanding impacts directly on the problems that face the land surveyor who specializes in surveys for real estate closings. Issues I observe are that some surveyors are charging too little for their services, they are allowing their fees to be escrowed from closing proceeds, and there is a great disparity, often, between the fees between surveyors for the same property without explanation of what is involved. Therefore, price becomes the main criteria by which a client makes their choice of the surveyor he/she hires.

I think some surveyors sabotage their own profession by continuing to support "the way things have always been done", allowing agents, title companies and lenders to control the surveyor's business. I can pick up the phone in my area and find several surveyors that will do a mortgage boundary on a ¼ acre subdivision lot for a great disparity in fees. Then, most surveyors agree to let the title company hold their money for 30-60 days waiting for a closing. And it is the surveyors who allow payment from escrow at closing. The only other fee paid at closing besides the commission is the termite inspector and the title fees. The appraiser has been paid, the home inspector has been paid, the repairs have been paid for, and the bank has been paid their application and credit report fees. Finally, it appears no one but the land surveyor cares if he/she is paid if the transaction does not close, and some surveyors "write" non-payment off in order to procure return business from the title company and/or agent. Our survey company is one the few in our area that requires even a simple written agreement between the payer (buyer or seller) and our office, and I believe we are the only surveyor who usually collects our fee at delivery, not from escrow. Subsequently, we don't get a lot of return phone calls from agents or title companies!

Surveyors can improve business relationships with real estate practitioners. Good communication and education are required: first, among the land surveyors is to get a consensus to address this fact, second, work among the surveying and real estate professions to arrive at solutions.

To state the obvious, I would think that there exists an excellent opportunity for land surveyors to take control of their own professional destiny and educate the real estate

profession and the public at large about the value of their services. There is no overnight solution. I encourage you to take time to speak with groups of agents if your business plan calls for you to do surveys for real estate closings. You can go to your nearest local Realtor board and volunteer to speak to and share your knowledge about surveying. Each area local board of real estate is in need of and constantly looking for program speakers with any topic related to real estate. Assume very little knowledge by the real estate agents about surveying, deed descriptions, and problems with titles that concern surveys.

Remember that most real estate agents haven't a clue what a surveyor does, and why surveyors can't just drive out and look up a few buried monuments and call them corners. I always stress that surveyors should try to explain the liability they carry; Realtors understand liability. I think it would be enlightening to most Realtors to explain why you might have to survey an entire section to get to one small 1/4 acre parcel. I would explain the amount of title search that need to be done. I would explain why the cost of a survey might be misunderstood, and why there might be discrepancies from previous surveyor's opinions, and why further research might be needed.

There are also problems that are beyond the control of the profession, at least in the short term. Obviously in my area, there is a great decline in real estate activity, and subsequently a decline in the need for these surveys. But, aside from that, there are more and more closings taking place without a new survey. There is no law that a survey must be ordered for a real estate closing in Florida. The lender is usually the determining factor as to whether a new survey is needed or if they will accept an old one. The title company can write an exception in the policy, or even use a recorded plat. The lender wants an updated survey if there have been any physical changes to the property, like pools, fences, permanent sheds, barns, etc. If there have not been known changes, the lender will usually accept the outdated survey along with a seller's signed affidavit that no changes have occurred on the property.

Real estate agents SHOULD recommend the client obtain a new survey, not only for the protection of their client, but to protect themselves. That said, the client makes the decision to order a new survey, and most won't understand potential problems, along with the fact that their title insurance may not protect them in survey-related matters if they close with an outdated survey.

The role of the real estate practitioner in a real estate transaction has done a complete overhaul in the last 10-15 years, but most in the land surveying profession have not altered their business practices. Surveyors have revolutionary equipment, and are required to possess a 4 year degree in many states, your education far outweighs what most real estate agents need to obtain a license, but these facts remain unknown outside your profession. This is a reflection of inadequate marketing and business skills. I see a long term solution in a bona-fide effort by surveyors as a group to promote their own profession and proactively take control of your own profession. Network among business associates at Toastmasters, Jaycees, Knights of Columbus, professional groups, and state surveying societies. You increase your exposure and your chances of attracting that client who hires you on your merits and skills, character and familiarity instead of price alone. It's up to you to protect and to promote your profession.