

MORTGAGE BROKER SALES COMMISSION

10 Steps to avoid Sales Commission Litigation



Sales Commission can be a flashpoint in disputes between Mortgage Brokerages and their agents. Litigation related to these disputes can result in monetary losses and in some cases the distraction of the lawsuit can drive brokerages to collapse.

The keys to reducing the risk of these lawsuits is to have a strong agreement, good records, transparency in dealings and clear communication.

1) Keep it Simple

Sales Commission agreements should be simple. Your sales commission calculations should be simple enough that you can explain it on the back of a napkin. A clear commission plan makes the salespeople understand what they are supposed to do to make the most incentives. It incents the right behavior.

2) Have a standard written agreement

If you do not have a written agreement, it is your word against the salesperson's as to what the terms of the sales commission calculation was. Written and unwritten policies and procedures and handshake are all not adequate in a legal situation. Have a standardized agreement for all your agents, with unique terms for a particular salesperson separated out in appendices.

3) Describe the commission calculations

Even sales commission calculations can be hard to understand. Describe each sales commission calculation in detail with at least a two examples representing low and high achievement. Make the goals of your sales commission process very clear. Describe your expectations, for example- minimum 10 loan originations per month, average loan size of \$250,000; and tie commission and bonus payments to these goals.

4) Explain the effect of any situation where money may be taken back

Any deductions from sales commissions should be clearly described and should not be subjective or arbitrary. Situations such as loan cancellations or splits where paid sales commissions may need to be withdrawn should be clearly described with examples.

5) Explain the effect of personnel changes

When an employee goes on leave of absence or gets promoted, demoted or terminated, describe the effect that will have on the sales commissions. Will they continue to get commissions, if so at what rate?

6) Specify duration of the agreement

Describe the fiscal period that the agreement covers which typically should be a single fiscal year. Describe the obligations after the term is complete; are sales commissions continued to be paid? If so how long and under what conditions?

7) Choose mediation or arbitration

Make sure that the agreement specifies that mediation and arbitration have to be first attempted before lawsuits can be filed. In certain states, mediation/arbitration can be made the final choice. This is a very effective method of avoiding lawsuits in the first place.

8) Provide professional commission statements

Automate your sales commission process using a standard software system, that retains all your commission data. Provide a professionally generated commission statement to the sales person that shows exactly how the commissions were calculated, with every check.

9) Review and sign the agreement

Sit down with the salesperson and review the entire agreement every fiscal year. Have the salesperson initial all key terms of the agreement as well as the entire document. Provide a copy to the salesperson and file yours.

10) Consult your lawyer

This article does not presume to provide legal advice. Review your standard agreement and any unusual modifications to the agreement with your lawyer.

