



## What happens to the protection period if an agreement to terminate a listing is signed?

Release Date: July 12, 2018

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**QUESTION:** I've been approached by the owner of a property who wants to list it for sale with me. He told me he'd previously had it listed with another firm but that the listing agreement had been terminated. He shared copies of the listing agreement and the termination agreement with me. The property had been listed using the Exclusive Right to Sell Listing Agreement (form 101) and the listing had been terminated using the Termination of Agency Agreement and Release (form 720). Paragraph 4 of the Termination Agreement says that the Protection Period in the listing agreement is preserved. Does that mean the owner would be obligated to pay commissions to both my firm and his former firm if he lists with me and sells the property before the end of the Protection Period in the other listing agreement?

**ANSWER:** No. First, it should be noted that although paragraph 7(b)(iii) of the Listing Agreement does give a listing firm the right to be paid its fee under certain circumstances if the property is sold during the agreed-upon Protection Period, the last sentence of paragraph 7(b)(ii) clearly states that the listing firm is NOT entitled to its fee if the seller enters into a valid listing agreement with another broker and the property is sold during the Protection Period.

Secondly, paragraph 4 of the Termination Agreement states that the parties' "respective rights and obligations under any defined "Protection Period" in the [Listing] Agreement shall remain in full force and effect for the specified period of time immediately following the Effective Date of this Agreement and Release." The effect of that language is to preserve whatever rights the former listing firm had under paragraph 7(b)(iii) of the Listing Agreement to be paid its fee. As noted above, if the property is listed with another firm, the former listing firm has NO right to its fee even if the property is sold during the Protection Period of its listing agreement. Stated differently, the language in paragraph 4 of the Termination Agreement does not increase the former listing firm's rights to be paid a commission if the property is sold during the Protection Period; it simply preserves the former firm's rights under paragraph 7(b)(iii) of the Listing Agreement.

The bottom line is that if the owner lists with you and the property is sold during the Protection Period in the other listing agreement, the owner would only be obligated to pay your firm a commission.

The primary purpose of paragraph 4 of the Termination Agreement is to preserve the listing firm's right to its fee if the seller sells the property himself or herself during the Protection Period to someone with whom the listing firm, a cooperating firm or the seller communicated regarding the property during the term of the listing agreement. Note that the listing firm must provide the names of any such persons to the seller within 15 days following the end of the listing agreement in order to protect any right to its fee.

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