

# The Record BUSINESS

SECTION  
B

THE MARKET:  
DOW 172.65  
S&P 500 22.05

Close: 13,167.20  
Close: 1,445.90

Stock listings L-11

TUESDAY, DECEMBER 18, 2007

THE RECORD B-3

## ASK A LAWYER

# Real estate commission requirements

### Broker should get it in writing

**Q. What are the requirements for a licensed real estate broker to be entitled to a commission?**

In New Jersey, a real estate broker must be licensed and her entitlement to a commission for the transfer of an interest in real estate is governed by the statute of frauds. In order to satisfy the statute of frauds, a written agreement stating either the amount or rate of the commission must be signed by the principal or its authorized agent.

Under the statute of frauds, a broker acting pursuant to an oral agreement may also be entitled to a commission, but only if the agreement is memorialized by a written notice (a faxed letter does not satisfy this statutory requirement) sent by the broker to the principal within five days after the oral agreement was made and before the date of the transfer or sale.

The notice is not effective if the principal serves the broker with a written rejection of the oral agreement before the broker, in good faith, enters negotiations with a prospective purchaser or tenant.

If a broker fails to satisfy the requirements of the statute of frauds, she will generally be barred from recovering a commission. However, where the broker fails to comply with the statute of frauds due to a mistake or technical deficiency, full or partial recovery of the commission may still be available for the reasonable value of services rendered, in spite of the absence of an enforceable contract.

To obtain such quasi-contractual relief from the court, the broker must show that:

- Her performance of services was in good faith.
- There was acceptance of the services by the person to whom they were rendered.
- There existed an expectation of compensation between the parties.
- The reasonable value of the services conferred can be established.

The advice of legal counsel should be sought prior to any negotiations to avoid the possibility of litigation with respect to potential broker claims.

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