

What is an agent to do when a listing is about to expire?

New market. Old issue. The end of 2022 has brought with it an issue that listing agents have not seen in some time: a listing that doesn't sell. Newer agents may have never experienced this and don't know what to do. This Quick Guide is intended to help.

Get an extension. If the relationship between the seller and broker is still good, and the seller still wants to sell, and the agent still wants to work with the seller, then continuing the listing on the same or different terms is the best course of action. C.A.R. Form MT, like the musician Prince, is the form formerly known as Modification of Terms. The now lengthy name is Modification of Listing, Buyer Representation or Other Agreement Between Principal and Broker, but the acronym remains MT. This form can be used to change the listing price, change the expiration date, or both, or make some other modification. It needs to be signed by both the seller and the agent for the broker to be binding on both parties.

Protect your right to a commission for work you have already done. If the sellers will not sign a modification, either because they say they no longer want to sell or because they have lost confidence in the listing agent, then it is important to protect your rights just in case the sellers change their mind.

Notice of Prospective Buyers/Transferees (C.A.R. Form NPB). This is the form to use for the listing agent to identify a buyer (i) who physically entered and was shown the property or (ii) for whom the agent submitted to the seller a signed, written offer to purchase, provided the activity (i or ii) occurred during the listing period. While any prospective buyer who meets the conditions could be named in form NPB, it is most important to identify those buyers the agent thinks are most likely to make another offer on the property, with or without an agent. The form notifies the seller that if the seller transfers the property to any of the identified buyers during the "protection period" then the listing broker is entitled to compensation.

Residential Listing Agreement protection period (C.A.R. Form RLA, paragraph 3A(2)). This paragraph, sometimes called a protection period or safety clause, obligates a seller to compensate the listing broker if for a certain period after the expiration of a listing, sellers enter a contract to sell to certain buyers even after the listing has expired. The paragraph only applies if a specific number of days is entered into the blank field at the beginning of the first sentence. Because in recent history properties were selling quickly, some agents have ignored 3A(2), or forgotten about it entirely, at the time of taking the listing thinking it would not be relevant. In the changed and slower market, 3A(2) has become more important. Another precondition to a listing agent protecting the right to be compensated is that the list of prospective buyers needs to be provided to a seller before or upon expiration of the listing. Providing the NPB after the listing has expired is too late.

Cancellation of Listing (C.A.R. Form COL). Whether there is a lot of time left before a listing expires, or a little, the seller and listing broker may agree to cancel the listing under mutually acceptable terms. While a salesperson (agent) may enter into a listing on behalf of a broker, only the broker or office manager can agree to cancel the listing. Different compensation options are available in the COL, ranging from no compensation at all required (paragraph 4), to a payment for out-of-pocket expenses the broker has already incurred (paragraph 3), to a reduced compensation if the seller lists with another broker and sells the property during the original listing period (paragraph 2), to an equivalent of the NPB form with the prospective buyers named in the body of the COL rather than in a separate NPB form (paragraph 1B).