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Strings attached: How resi firms claw back commissions to fend off poaching

Last year, Compass introduced a referral fee to release listings

By E.B. Solomont | May 01, 2019 07:00AM

Firms are now aggressively enforcing clawbacks.(Credit: iStock)

For the 200-person boutique firm CORE Real Estate, losing 35 agents to Compass last year was a body blow.

As it hemorrhaged agents, CORE updated its agent policy manual — reflecting the new steps it would take to prevent agents from leaving and taking their listings with them.

In addition to rolling back commission splits to 40 percent (an industry standard) on all pending deals for agents who announce that they're leaving, the manual now contains a new and extensive section describing "returnable costs" that agents owe if they leave.

In addition, CORE claims ownership of all photos paid for using agents' earned marketing budgets. "You have no choice but to sign it," said one former agent.

These type of clawback policies have been around for years, but firms are now tightening up their rules and getting more aggressive with enforcement.

"The firm puts a lot into [agents], and then the firm doesn't want to get screwed when they leave," said one brokerage head. "We work hard to train these agents and grow them."

Late last year, the Corcoran Group also modified its longtime policy for departing agents, requiring some to return already-paid commissions.

At Corcoran, agents who negotiate a higher split than outlined by the company's official commission split schedule are required to repay the difference on all deals that have closed in the last 18 months — if they leave for a rival firm. A spokesperson for the firm declined to comment on internal policies.

New York City brokerage chiefs said these policies are a response to fierce and unprecedented competition to lure agents with bonuses and high splits.

“Before Compass it was Town,” said Frederick Peters, CEO of Warburg Realty Partnership Peters, referring to the venture-backed firm and the flashy-but-now-shuttered residential brokerage.

Peters said four or five years ago, Warburg started rolling back the commissions for departing agents to 40 percent in response to “hyper-aggressive recruiting environment.”

Peters — whose firm also gives agents who are leaving 40 percent on pending deals — said the status quo is nothing short of “predatory” and that “everyone would like to defend themselves.”

In 2018, the city’s top residential firms saw massive agent churn.

Over a 12-month period, Douglas Elliman lost 497 agents citywide but gained 525 for a total of 2,696, according to a recent analysis by *The Real Deal*. Corcoran lost 380 but gained 372 for a total of 1,837.

Meanwhile, Compass ended the year with 1,568 agents — an 80 percent jump from 2017.

More recently, Corcoran lost more than 30 agents to Compass, as the latter firm ramped up hiring in New York. In early April, Compass also struck a deal to buy Stribling & Associates, a boutique operation with nearly 300 agents.

Other firms are also holding brokers accountable when they defect.

According to a copy of Elliman’s 2018 Independent Contractor Agreement (ICA), the firm may “recoup advertising dollars expended on exclusives” that are released when the agent leaves. And Elliman can collect money it spent on an agent’s assistant for the year leading up to a departure.

Meanwhile, last year, Brown Harris Stevens — which had been paying departing agents at a 50 percent split — adopted the industry standard of 40 percent.

“Because of all the change, we were like, ‘It’s very lonely on the high road and the rent is very expensive,’” said CEO Bess Freedman.

A comparison of CORE’s policy manuals from 2015 and 2018 underscores the push brokerages are making to take more ownership of their agents and their intellectual policy.

CORE’s 2018 manual states that agents who leave the company within 12 months must repay 100 percent of their expenditures under the Core Agent Marketing Allocation, which is calculated at 1.5 percent of their gross commission income. The amount drops to 75 percent for agents who remain at CORE for 12 to 24 months, and 50 percent for agents who stay between 24 and 36 months.

CORE’s Shaun Osher declined to comment on the company’s policy. But the head of another brokerage insisted that firms are doing nothing wrong by recouping money they invested in agents.

“If you have been given stock options, and you leave before they vest, you give them back,” said one brokerage head. “They don’t vest.”

Several sources also said Compass — with lucrative bonuses and high splits — has fueled competition, forcing firms one-up job offers.

Rory Golod, Compass’ general manager in New York, rejected that argument. “You can’t force someone to be at a company they don’t want to be at,” he said. “If someone believes there’s an opportunity to grow their business at a different firm … that's not going to hold them back. Ultimately, what you're trying to do is to the detriment of the agent."

But even Compass doesn't hand out job offers without strings attached.

One Compass ICA signed in 2018 — a copy of which was reviewed by *TRD* — offers a 90 percent commission split for a certain period of time, plus a $50,000 initial marketing budget and a $75,000 signing bonus. But it also states that if the agent leaves Compass within two years, the agent must pay back the incentives.

As for agents' listings, Compass introduced a "key-person clause" to contracts in 2015 stating that agents who leave can take clients and listings with them without paying a referral fee to Compass.

However, the current policy manual stipulates that a departing agent's commission split on pending deals reverts back to 40 percent. And while the firm still allows agents to take their listings, the policy manual now says that "Compass shall be paid the commission it would have retained had the transaction closed through Compass."

Golod said Compass initially introduced the key-person clause to "get out in front" of the industry's clawback policies, which penalize agents who switch firms. "Unfortunately, we just did not see much traction and buy-in from other firms to get behind this," he said.

He said early last year, Compass also modified the key-person clause to include a referral fee from other firms, which he noted is in line with the market standard.

"We're still true to our word that we will release listings," he said. "We're just saying if everyone is asking for a referral fee, we're going to do the same."

Ultimately, the burden will fall on the new firm rather than the agent. "That stands in contrast with what we've seen with other firms, which haven't released listings at all regardless of the referral fee offered or request to negotiate."

But oftentimes, agents don't fully grasp the company policy until it's too late.

Earlier this month, a group of ex-Corcoran agents received letters threatening legal action if they did not pay backs sums as high as $100,000.

"I have no issue with them looking to get reimbursed for certain things like marketing… but the notion that they're trying to recoup commission that you've rightfully earned is preposterous," said one agent who requested anonymity.

Another former Corcoran agent said the new policy contradicts agents' independent contractor status by handcuffing them to firms. "That's the crux of this entire matter," the agent said.

The issue has sparked discussion within the New York Residential Agent Continuum (NYRAC), a broker advocacy group that launched last fall.

Co-founder Heather McDonough, who joined Compass from CORE in 2018, said the group hasn't yet formed a policy position. But, she said, "We are definitely here to be an advocate for agents; if people are being harassed and bullied, we're strongly against it."

"Agents are independent contractors," McDonough added, "but they're individuals versus large corporations."