PM Resource - Sale Clause in PM Contracts

We’ve recently had some questions regarding the sales clause in property management contracts and when the sales fee would be due to the REALTOR® property manager. Let’s first begin by looking at the language in the VAR Property Management Contract, Form 900, and deconstructing the clause, (the Sale Clause).

25. SALE. In addition to any leasing, management or other fee payable hereunder, a sales fee equal to \_\_\_\_\_ if the Property is sold during the lease term or up to 180 days following the expiration of the lease term, to a purchaser procured by Agent, or to any entity affiliated with, controlled by or under joint ownership or control with such Owner or any of its owners or principals.

The first things to look at are the two conditions which deal with when the Property is sold:

1. if the Property is sold during the lease or,
2. if the Property is sold in the 180 days after the end of the lease.

Either of these would have to be true to continue to the next step of the analysis.

If either of these conditions are true, then we must look at the second portion which contains another set of conditions. The property is sold to either:

1. a purchaser procured by Agent (the property management agent) or,
2. any entity affiliated with, controlled by, or under joint ownership or control with such Owner or any of its owners or principals.

This first condition is simple, if the purchaser was someone procured by the property management Agent, then it is true. The second condition, broken down, focuses on business entities that the Owner has control of or is affiliated with. If a business entity that is affiliated with the owner in certain ways is the buyer, this condition is met.

However, what happens after a termination? If the property management agreement is just terminated, then the Sale Clause still applies. However, if the agreement is terminated **and** there is a release, then you likely extinguish all your rights and obligations, including the Sale Clause.

Form 900A is VAR’s form for termination and release of a property management agreement, it states:

1. Owner and Agent mutually terminate entirely all their respective rights and obligations arising under the Agreement.

If you have a termination and release, but still want the Sale Clause to apply, you will have to note this carveout in Form 900A’s paragraph 9 - Other Provisions. A release requires specific language, so a termination does not automatically become a release.

Let’s go over some examples.

Agent is a property manager for Landlord. Landlord gives proper Notice and terminates the Agreement effective at the expiration of the lease term. No release is signed. Owner would be liable for the sales fee if Owner had the Property listed and sold it within 180 days of the expiration.

Agent is a property manager for Landlord. Agent gives proper Notice and terminates the Agreement effective at the expiration of the lease term. No release is signed. Owner would be liable for the sales fee if Owner had the Property listed and sold it within 180 days of the expiration.

Agent is a property manager for Landlord. Landlord gives proper Notice and terminates the Agreement effective at the expiration of the lease term. Agent uses Form 900A to terminate and release, but nothing is in Paragraph 9 about a sales fee. Owner is no longer liable for the sales fee.

Agent is a property manager for Landlord. Landlord gives proper Notice and terminates the Agreement effective at the expiration of the lease term. Agent uses Form 900A to terminate and release, Paragraph 9 contains a clause which preserves the original Agreements sales fee. Owner is then liable for the sales fee if Owner had the Property listed and sold it within 180 days of the expiration.