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NOTES

REAL ESTATE BROKERAGE COMMISSIONS IN COLORADO

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Suits involving real estate brokerage commissions comprise a significant portion of present-day litigation. In such cases the usual question is whether the real estate broker is entitled to his commission where a sale has not been effected or where some outside influence has altered the original conditions.

The usual real estate listing contract must be considered as unilateral in nature. The owner, anxious to sell or trade his property, places it in the hands of a broker and promises to pay a commission should the broker succeed. It is rare that the broker makes a return promise that he will find a buyer. Such a transaction, therefore, is an offer by the owner for the formation of a unilateral contract. The broker is granted the privilege of accepting by performing the requested service. It is evident that a contract is not completed until that service has been performed, either substantially or completely. The conclusion that the listing contract is unilateral in nature is further substantiated by the fact that the owner has no action for breach of contract if the broker fails or refuses to perform.

It is true, of course, that other factors can be introduced to vary this simple illustration and thereby create more complex situations. For example, at what stage of the broker's performance in seeking a purchaser does a valid contract come into being, entitling the broker to his commission? The purpose of this note is to outline the Colorado law pertaining to the subject of real estate brokerage commissions.

GENERAL REQUIREMENTS AND CONDITIONS

The general rules pertaining to real estate brokerage commissions are well defined in Colorado. Both the cases and the statutes have established the boundaries that determine whether a broker has earned his commission. The pertinent statute states:

> "No real estate agent or broker shall be entitled to a commission for finding a purchaser who is ready, willing and able to complete the purchase of real estate as proposed by the owner, until the same is consummated or is defeated by the refusal or neglect of the owner to consummate the same as agreed upon."[1]

This rule has been repeated and amplified many times throughout

[1] Colo. Rev. Stat. § 117-2-1 (1953).

the judicial history of the state. Before a broker is entitled to his commission, it is necessary that he produce a prospect who is ready, willing and able to purchase the property upon the terms designated by the owner. The broker must also be the "procuring or moving cause" of the sale, and the sale must proceed from his efforts as a broker.[2] If, through some fault of the principal, the sale is not consummated, the broker may recover his commission if he has produced such a purchaser.[3] It is a prerequisite, however, that the broker perform his part of the bargain.[4]

The broker, of course, first must be employed by the principal before he may become entitled to a commission for procuring an eligible buyer. A mere statement by the owner of the price at which he values his property cannot be considered as an offer to sell through the broker. Further negotiations between the broker and the owner may possibly create a valid contract, but there must be something more than the mere statement of value.[5] Even if the broker, in response to such a statement of value, finds a purchaser, no liability is imposed upon the owner unless the owner accepts the *broker's* offer. Acceptance by the owner of the brokers offer creates a valid controct.[6] However, it has been held that such an acceptance by the owner does not necessarily entitle the broker to a commission if the owner had originally named a net price; for then, the owner may assume that the broker is looking elsewhere for his commission.[7]

THE MOVING CAUSE RULE

How much effort by the broker is required before he may be considered the "moving or procuring cause" of the sale? This problem is presented perhaps more often than any other single question in suits for real estate commissions. A simple rule is found in a California case where the court said, "He who shakes the tree is the one to gather the fruit."[8] No Colorado statute mentions "moving cause," and therefore it is necessary to refer to case law for clarification of this point. It is elementary that the broker's efforts must be the principal source of motivation for the purchaser. The broker's efforts must be so extensive

[2] Cole v. Thornburg, 4 Colo. App. 95, 34 Pac. 1013 (1893); Restatement, Agency § 448 (1933).
[3] Finnerty v. Fritz, 5 Colo. 174 (1879).
[4] Crampton v. Irwin, 71 Colo. 1, 203 Pac. 672 (1922).
[5] Castner v. Richardson, 18 Colo. 496, 33 Pac. 163 (1893).
[6] Geier v. Howells, 47 Colo. 345, 107 Pac. 255 (1910).
[7] Clammer v. Eddy, 41 Colo. 235, 92 Pac. 722 (1907).
[8] Sessions v. Pacific Improvement Co., 57 Cal. App. 1, 206 Pac. 653, 660 (1922).

that the sale would not have been made without his work. It is not sufficient if the broker merely conveys an acceptance of an offer to the principal where the offeror himself had been previously negotiating with the owner.[9] When the prospective buyer engages a broker to show him a specific property that already has been described to him by another broker, such exhibition does not represent sufficient moving cause. It has been held in such a case that the plaintiff was not even the procuring cause of the buyer's seeing the property.[10]

After showing the property to a client, the broker must follow through in order to earn his commission. Should he fail to follow through or to inform his principal of the prospective buyer, he will not be heard to complain when the principal negotiates and concludes the sale without his assistance.[11]

Typical of many similar cases is *Cowgill v. Neet*[12] which involved an agreement between two brokers providing that commissions would be shared on sales made by either to prospective buyers sent by the other. The plaintiff had shown his client some property which he knew was listed with the defendant. The client was unable at first to reach an agreement with the owner, but was successful later, following negotiations at the defendant's office. The court held that the plaintiff was the moving cause of the sale since he had produced the buyer in contemplation of the contract, and therefore he was entitled to a share of the commission.

In cases involving multiple-listing property, the principal must be equally fair to all brokers. The broker is entitled to a commission if his efforts are defeated by granting of reduced terms by the principal to a second broker who sells the property to a client known to have been procured by the first broker.[13] However, should another broker close a sale on equal or more favorable terms, the first broker earns nothing since he was unable to close the sale.[14]

REQUIREMENTS OF A SALE

A sale must be made before the broker has earned his commission unless the principal has interfered in some way to the detriment of the

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[9] Heady v. Tomlinson, 134 Colo. 33, 299 P.2d 120 (1956).

[10] Williams v. Smith, 26 Colo. App. 23, 139 Pac. 1124 (1914). Accord, Root v. Barbour, 51 Colo. 399, 118 Pac. 968 (1911) (third party told the prospect property was for sale).

[11] Conway-Bogue Realty and Inv. Co. v. Burch, 93 Colo. 518, 27 P.2d 500 (1933); Chaffee v. Widman, 48 Colo. 34, 41, 108 Pac. 995, 997-98 (1910).

[12] 127 Colo. 184, 255 P.2d 399 (1953). And see Bigler v. Croy, 81 Colo. 505, 256 Pac. 18 (1927); Niebergall v. James, 78 Colo. 190, 240 Pac. 332 (1925) (broker was not the moving cause and did not receive commission); Satisfaction Title and Inv. Co. v. York, 54 Colo. 566, 131 Pac. 444 (1913) (broker was moving cause of sale because he had asked a neighbor to tell the visiting buyer-to-be about the property); Leonard v. Roberts, 20 Colo. 88, 36 Pac. 880 (1894) (buyer, mistaken in thinking that plaintiff worked for defendant, bought property from defendant after a friend had said that the plaintiff was handling the property); Leech v. Clemons, 14 Colo. App. 45, 59 Pac. 230 (1899) (sale made through instrumentality of an agent of the broker).

[13] Ness v. Todd, 86 Colo. 403, 282 Pac. 250 (1929); Walker v. Bennett and Meyers Inv. Co., 79 Colo. 170, 244 Pac. 465 (1926); Millage v. Irwin, 68 Colo. 188, 187 Pac. 525 (1920); Idelson v. Robinson, 27 Colo. App. 507, 150 Pac. 322 (1915).

[14] Ginsberg v. Frankenberg, 133 Colo. 382, 295 P.2d 1036 (1956); Hodgin v. Palmer, 72 Colo. 331, 211 Pac. 373 (1922); Witherbee v. Walker, 42 Colo. 1, 93 Pac. 1118 (1908); Carper v. Sweet, 26 Colo. 547, 59 Pac. 45 (1899).

broker. Moreover, there must be a completed sale and not just an option to buy. Procuring a prospect who negotiates an option contract with the owner does not entitle the broker to his commission when the prospective buyer fails to purchase the property.[15]

One early case[16] presented a unique situation where the broker was held not entitled to his commission even though he had produced two prospective purchasers. The first prospect signed an option for the purchase of the property. While this option was still in effect, the broker produced another prospective buyer, but the owner refused to consider the second proposition. The first prospective buyer subsequently permitted the option to lapse, but by that time the second prospect was no longer interested. The court held that the owner was justified in refusing to discuss the second offer while the option was still in effect. Therefore, since both the optionee and the second client failed to complete any transaction, there was no basis for awarding the broker a commission.

In another early case the broker was promised his commission at the time of the first payment of the purchase price if he could find a buyer for his principal's mining property. The plaintiff secured a prospective buyer who negotiated a contract with the owner whereby the vendee agreed to pay approximately 40% of the purchase price for the right of possession. The balance was to be paid systematically from profits realized from operation of the mine. The contract further provided that should the vendee find operation unprofitable, the contract could be declared void, with the vendee forfeiting all that he had paid to date as liquidated damages. Soon after assuming possession, the prospective buyer forfeited all monies paid and the contract was declared void. The court held that the broker's commission had been contingent upon a completed sale. Therefore, he was not entitled to a commission by procuring a prospect who merely entered into an option agreement or a contract providing that payment in full was optional with the vendee.[17]

Occasionally some extrinsic circumstance will result in the failure of a prospective sale. In *Clyncke v. Brant*,[18] after the sale had been completed and the broker paid his commission, the vendor and vendee on their own initiative decided to exchange the property and rescind the sale. In a suit for a refund of the commission the plaintiff-principal's claim was denied. The court held that in the absence of fraud or an agreement providing for a refund of the commission, the broker was entitled to a commission for his services since a sale had been made. A similar result was reached in *Wray v. Carpenter*[19] where the vendee later proved to be financially unable to complete payment, and it was necessary for the vendor and the vendee to resell the property to another. The court ruled that the vendor must be held to have considered and approved the financial ability of the buyer when he accepted the buyer's proposition.

In one interesting case the court held that where the government subsequently takes the offered land through eminent domain proceed-

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[15] Neal v. North Fork Land & Cattle Co., 73 Colo. 79, 213 Pac. 334 (1923); Stelson v. Haigler, 63 Colo. 200, 165 Pac. 265 (1917).
[16] Fox v. Denargo Land Co., 37 Colo. 203, 86 Pac. 344 (1906).
[17] Brown v. Keegan, 32 Colo. 463, 469, 76 Pac. 1056, 1058 (1904).
[18] 117 Colo. 245, 185 P.2d 783 (1947).
[19] 16 Colo. 271, 27 Pac. 248 (1891). See also note 28 infra.

ings, the broker is not entitled to his commission even though he has been engaged to negotiate a sale to the government.[20] In a similar case the broker was found to be ineligible for a commission where he had secured options upon the owner's land for a corporation engaged in wartime contracts with the government.[21] In each of these cases the court held that condemnation does not constitute a sale, and therefore does not operate as such under the broker's contract.

The broker must be free of carelessness in handling and negotiating a contract for the principal in order to be entitled to his commission. In *Boggs v. Lumbar*[22] the broker knew that conveyance of the property was contingent upon the county court's approval of any sale he might negotiate. After the broker found a prospect the county court refused to approve the sale. The Colorado Supreme Court refused the agent's subsequent plea for his commission since he had known of the restriction and had failed to complete a sale as agreed. In another case, where the listing contract stated that time was of the essence, the plaintiff was also refused his commission. This decision was reached when it was shown that the transaction was not completed within the required time because of the broker's neglect and tardiness, and that for this reason the sale was not made.[23]

Gray v. Blake[24] involved a situation where the broker failed to obtain a listing from both joint tenants, husband and wife, and the wife later refused to convey the property to a prospective vendee even though her husband was willing to do so. The court held that the broker had the right to rely upon the asumption of authority by the husband in proposing the listing, and that the husband could not avoid liability solely on the ground that he was later unable to induce his wife to join in the conveyance. However, since the broker had known at the time of the listing that the wife was a joint tenant and did not wish to sell, he was not entitled to a commission since he had failed to obtain a listing from her.

As mentioned before, the vendor-principal has an obligation to the broker not to unduly hinder the transaction. Where there is a title

[20] Haigler v. Ingle, 119 Colo. 145, 200 P.2d 913 (1948) (plaintiff had no part in initiating the condemnation proceedings).
[21] Wilson v. Ross Inv. Co., 116 Colo. 249, 180 P.2d 226 (1947) (broker knew nothing of the beginning of condemnation proceedings, and his subsequent offer to assist owner in these proceedings was refused).
[22] 75 Colo. 212, 225 Pac. 266 (1924).
[23] Dunton v. Stemme, 117 Colo. 327, 187 P.2d 593 (1947).
[24] 128 Colo. 381, 262 P.2d 741 (1953).

defect or an encumbrance, it is mandatory that the owner be prepared to convey clear title to a prospective purchaser after a binding contract has been signed.[25] It is also necessary that the principal be prepared and able to convey the property as listed. In one case, where the prospective vendor failed to place a bid at a foreclosure sale held to pay off a mortgage, the court held that the broker had earned his commission by obtaining a prospective buyer even though the principal no longer owned the property.[26]

The broker is entitled to his commission when he produces a prospective buyer who is ready, willing and able to purchase upon the seller's terms. Although the owner-principal is not required to convey the property to the prospective buyer, he is liable for a commission to the broker. The owner is precluded from rejecting any valid offer in accordance with the original terms so as to avoid liability for a commission. It matters not what reason is given for refusing the offer.[27]

The broker has been granted a commission where the principal rescinded the sales contract after learning that the prospect had misrepresented facts to both the broker and the owner.[28] The same result has been reached in another case where the seller refused to convey any of the listed property when the buyer refused to pay for part of the described land which the seller did not own.[29] In such situations, however, the broker must be able to show that he procured an eligible buyer upon the seller's original terms. The burden of proof is upon the broker to show not only that the prospective purchaser was ready, willing and able, but that the sale would have been made.[30]

An interesting case, involving two separate counts, illustrates the two extremes usually found when the owner refuses to deal with a buyer.

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[25] Morgan v. Howard Realty Co., 68 Colo. 414, 191 Pac. 114 (1920); W. T. Craft Realty Co. v. Livernash, 27 Colo. App. 1, 146 Pac. 121 (1915). Cf. Colo. Rev. Stat. §§ 117-2-2 and 117-2-3 (1953).

[26] Amidon v. Bettex, 102 Colo. 162, 77 P.2d 1032 (1938).

[27] McCullough v. Thompson, 133 Colo. 352, 295 P.2d 221 (1956); Klipfel v. Bowes, 108 Colo. 583, 120 P.2d 959 (1942) (owner's attorney removed the owner's signature from contract when broker refused to split his commission with the attorney); Dickey v. Waggoner, 108 Colo. 197, 114 P.2d 1097 (1941). Cf., Cornett v. Cunningham, 75 Colo. 220, 225 Pac. 249 (1924) (where, however, defendant had promised to pay a commission "only if a deal is made"); Norris v. Walsh, 71 Colo. 185, 205 Pac. 276 (1922) (commission was to be paid "when the purchase price is paid").

[28] Deweese v. Brown, 55 Colo. 430, 135 Pac. 800 (1913) (property traded by prospect was later found to be subject to flooding despite the assurances of prospect; court held that defendant had accepted prospect as a valid purchaser upon entering into contract, and was therefore liable for payment of a commission).

[29] Cawker v. Apple, 15 Colo. 141, 25 Pac. 181 (1890).

[30] Colburn v. Seymour, 32 Colo. 430, 76 Pac. 1058 (1904).

The plaintiff was engaged to find buyers for several large tracts belonging to the defendant. The listing contract stipulated that the vendee must make a down payment of 25-30% of the purchase price with the balance to be paid on terms to be negotiated by the buyer and owner. Count one of the complaint alleged that plaintiff had found a prospective buyer for one of the defendant's tracts, but that the owner refused to negotiate terms for payment of the balance. Here the court declared that the broker was entitled to his commission since the owner had not made an honest effort to reach an agreement. While the owner was not required to consummate an agreement upon terms, he was bound to make a reasonable attempt to reach such an agreement. But, said the court, if such negotiations are commenced in good faith, the broker is not entitled to his commission until the terms were agreed upon. Count two alleged similar facts. Here, however, the prospective buyer had made an offer of only 12½% down, which the defendant refused. The court sustained the defendant's right of refusal and held that the plaintiff had not produced a buyer ready, willing and able to buy in accordance with the terms of the listing.[31]

It is also fundamental that once the principal names a selling price, he is precluded from later increasing it. Here too, the principal is not bound to accept the offer made by a prospective buyer, but he is liable for a commission to the broker whether he sells or not. It is immaterial that the value has increased, or that the owner feels his original asking price is too low.[32] This general rule was modified in *Cocquyt v. Shower*[33] by making an exception where the lapse of time between the making of the listing and the procurement of a prospect was unreasonable, and the owner had materially increased the value of the sale property by improvements and additions.

Where only an option agreement is entered, it has been held that the broker is not entitled to his commission if the prospective buyer either refuses or fails to complete the transaction. This is true even if the would-be purchaser has paid part of the purchase price.[34]

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[31] Costilla Land Co. v. Robinson, 238 F.2d 105 (10th Cir. 1956); Dickey v. Waggoner, 108 Colo. 197, 114 P.2d 1097 (1941).

[32] Dickey v. Waggoner, supra note 31; Perkins v. Russell, 56 Colo. 120, 137 Pac. 907 (1913) (subject of sale was herd of sheep); Millett v. Barth, 18 Colo. 112, 31 Pac. 769 (1892); Buckingham v. Harris, 10 Colo. 455, 15 Pac. 817 (1887); Smith v. Fairchild, 7 Colo. 510, 4 Pac. 757 (1884).

[33] 68 Colo. 89, 189 Pac. 606 (1920).

[34] Walker v. Chatfield, 126 Colo. 600, 252 P.2d 109 (1952); Norris v. Walsh, 71 Colo. 185, 205 Pac. 276 (1922); Hildenbrand v. Lillis, 10 Colo. App. 522, 51 Pac. 1008 (1898).

As a general rule, the broker is entitled to his commission when a sale is made on substantially the same terms as given in the listing. Any material change in terms, however, must be agreed to by the owner.[35] The same rule is applied with even greater emphasis when the broker is engaged to find someone with whom the principal may trade his property. The court has often pointed out that where a trade is contemplated, the principal must expect some variation in terms in order to equalize differentials in values between the properties.[36]

SALES MADE BY PERSONS OTHER THAN THE BROKER

The general rules concerning moving cause, employment of the broker, modification of terms and refusal by the owner to convey apply equally where someone other than the original broker sells the property. As will be shown later, the rule in Colorado apparently is that the owner may sell his own property unless expressly prohibited by the listing contract.[37] The courts are careful to inquire into any sale made by the owner where there may be a possibility of fraud and will not permit the owner to escape liability for a commission if he has not acted in good faith.[38]

The principal may discharge the broker at any time and sell the property himself if he does not take advantage of the broker's prior work in doing so.[39] However, in the absence of fraud, the owner is privileged to sell the property himself without waiting indefinitely for the prospect with whom the broker is unable to close.[40]

The courts will also apply the rule of moving cause and permit a broker to recover his commission whenever the broker has been instrumental in bringing the parties together.[41] Thus the broker will recover when the owner closes the sale himself upon slightly different terms[42] or when the broker is not personally present at the closing of the sale after he has brought the parties together.[43]

Closely allied to the subject of moving cause are those cases where the owner himself sells the property to one not procured by the broker. As always, the courts will scrutinize the transaction to insure that the sale was made in good faith. Consequently, the courts will not permit a sham sale to avoid payment of the broker's commission.[44] However, if the sale is made in good faith, it becomes a question of whether the broker had produced a buyer before the owner sold to another.[45]

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[35] Flower v. Humphreys, 72 Colo. 25, 209 Pac. 503 (1922); Minks v. Clark, 70 Colo. 323, 201 Pac. 45 (1921); Burgess v. Cole, 69 Colo. 341, 194 Pac. 611 (1920); Geiger v. Kiser, 47 Colo. 297, 304-05, 107 Pac. 267, 270 (1910).

[36] Houston v. H. G. Wolff and Son Inv. Co., 94 Colo. 73, 28 P.2d 255 (1933); Knowles v. Harvey, 10 Colo. App. 9, 52 Pac. 46 (1897); Carson v. Baker, 2 Colo. App. 248, 29 Pac. 1134 (1892).

[37] Lambert v. Haskins, 128 Colo. 433, 263 P.2d 433 (1953).

[38] Thompson v. Wolff, 108 Colo. 259, 115 P.2d 649 (1941); Troutman v. Webster, 82 Colo. 93, 257 Pac. 262 (1927); McCampbell v. Cavis, 10 Colo. App. 242, 50 Pac. 728 (1897).

[39] Liggett v. Allen, 77 Colo. 116, 234 Pac. 1072 (1925).

[40] Babcock v. Merritt, 1 Colo. App. 84, 27 Pac. 882 (1891) (sale made some six months later). Accord, Wheeler v. Beers, 45 Colo. 547, 101 Pac. 758 (1909) (plaintiff did not continue his efforts and the sale was subsequently made some eighteen months later through no effort of the plaintiff). Cf., Geiger v. Kiser, 47 Colo. 297, 304-05, 107 Pac. 267, 270 (1910) (sale made shortly after owner had initially rejected the buyer's offer; owner held liable for commission).

[41] Jones v. Boyer, 68 Colo. 568, 193 Pac. 492 (1920).

[42] Houston v. H. G. Wolff and Son Inv. Co., 94 Colo. 73, 28 P.2d 255 (1933).

[43] Zeigler v. Butler, 64 Colo 274, 171 Pac. 64 (1918); Howe v. Werner, 7 Colo. App. 530, 44 Pac. 511 (1896).

[44] Fist v. Currie, 49 Colo. 284, 112 Pac. 689 (1910); Innes v. Bogan, Gaines & Co., 41 Colo. 9, 91 Pac. 1108 (1907).

[45] Dickey v. Waggoner, 108 Colo. 197, 114 P.2d 1097 (1941); Fist v. Corrie, supra note 44; Owl Canon Gypsum Co. v. Ferguson, 2 Colo. App. 219, 30 Pac. 255 (1892) (subject of stocks in the defendant company; good dissenting opinion).

The case of *Anderson v. Smythe*[46] dealt with the problem of the owner directly selling the property. In that case the broker did not tell the prospect who the owner was, nor did he tell the owner of the offer. After refusing the broker's offer, the prospect bought the same property on his own initiative. Here the court felt that the broker had not brought the parties together and released the owner from liability for commissions.

In *Lawrence v. Weir*[47] the defendant employed the plaintiff to find purchasers for both his old home and a new house which he had recently built. Plaintiff made no mention of the older house to a client, but attempted unsuccessfully to interest him in the newer house. Later, the client on his own initiative learned of the older house and purchased it. The court ruled the owner not liable to the broker for any commission. The broker had made no effort to interest his client in the older house and was not the moving cause of the sale.

EXCLUSIVE LISTING CONTRACTS

Exclusive listing contracts present perhaps the most difficult situations for adjudication. It is clear that whether the broker is given the exclusive *agency* or the exclusive *right* to sell the principal's property, the principal is precluded from selling through another broker.[48] However, should the first broker fail to find a buyer within the appointed time, there is nothing to prevent a second broker from selling the property after the first listing is cancelled.[49]

Very often, after engaging a broker in an exclusive listing, the owner will negotiate and conclude a sale himself. Nothing in the pertinent statutes prohibits this, and therefore the question is whether the broker had the exclusive *right* or only the exclusive *agency* to sell. Naturally all of the factors previously discussed, such as moving cause, must also be considered. Only one case on this specific point has been decided in Colorado. In *Lambert v. Haskins*[50] the plaintiff agent had been unable to close a sale when the owner himself sold the property at a lower price. Although the listing contract provided that the broker was the exclusive agent, and thereby precluded the owner's selling through another broker, the court held that the owner could sell the property himself without liability, unless expressly prohibited from doing so by the contract.

Examination of several currently-used exclusive listing contracts reveals that they purport to grant the broker exclusive *rights* of sale. All of these contracts expressly provide that a sale by the owner to any party with whom the broker has negotiated will not defeat the broker's right to a commission.[51] Some contract forms include the additional phrase "and whose name was disclosed to the owner by the broker."

It would be of great interest to see how the Colorado Supreme Court would rule in a case involving such a "name disclosure clause" where the owner himself sold the property to a party whose name had not been divulged by the broker. It seems probable that the Supreme Court

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[46] 1 Colo. App. 253, 28 Pac. 478 (1891).
[47] 3 Colo. App. 401, 33 Pac. 646 (1893).
[48] Paulsen v. Rourke, 26 Colo. App. 488, 145 Pac. 711 (1914).
[49] Wallick v. Eaton, 110 Colo. 358, 134 P.2d 727 (1943).
[50] 128 Colo. 433, 263 P.2d 433 (1953) (case of first impression in Colorado).
[51] The usual period is 60-days following the end of the agreed period for exclusive listing. This is, of course, in addition to the listing period itself.

would sustain the right of the owner to sell his own property to any person not contacted by the broker. It is possible that the same right to sell would be extended in such a case whether or not the name disclosure clause be included in the listing contract. It seems reasonable to conclude that the *Lambert* case means that the exclusive agency (or right) applies only to parties contacted by the broker and whose names are disclosed to the owner. Any other interpretation would place an unreasonable limitation on the right of the owner to sell his own property.