

Estate Agent Commission Without a Written Agreement: Are You Still Liable?

Whether an estate agent can earn commission when there is no written contract is one of the trickiest issues that can arise when they help sell or rent a property. This raises a key legal question: can the agent still demand payment of his commission if there is no written agreement confirming that he is entitled to commission?

The General Rule

Under South African law, an estate agent needs a valid agreement in terms of which he is entitled to earn commission. The agreement does not necessarily have to be in writing.

In the recent matter of *Golden Rewards 120 CC t/a Remax Marine v M3 Holdings (Pty) Ltd* (2024), the court had to decide whether an agent could claim commission when no clear payment agreement existed. After the agent introduced the buyer, the seller alleged that the agent was not entitled to commission because there was no written agreement between the parties in terms of which commission would be payable. The court looked at the following factors:

- *Was an express agreement concluded?*
- *If there was no express agreement, was an implied agreement concluded – did the parties' actions imply that an agreement for commission was concluded between the parties?*
- *The amount of commission payable to the agent.*

Although there was no written agreement, the court ruled that both sides' behaviour in this matter showed that they silently agreed to the commission being payable to the agent. The court found that the agent introduced the purchaser and did the work with the knowledge of the seller, and that the agent is entitled to the commission. Because the parties did not agree to a specific commission, the court ordered the seller to pay the agent a "reasonable" commission.

This case illustrates why agents and sellers should set out services and commission in writing to avoid future disagreements.

Conclusion:

The key lesson from the *Remax Marine* matter is that clear, written agreements are vital. When commission, duties, and results are vague, it often leads to strained relationships and costly litigation.

To prevent disagreements, the parties should put every agreement in writing, clearly stating the work to be done and the commission to be paid, before any mandate is accepted or executed.

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