



homeowners to do “moderate risk” deleading, such as removing woodwork, windows and dry scraping of up to two square feet per room, hallway or common area that previously had to be completed by a licensed deleading contractor. A

For homes built prior to 1978 the Lead Paint Law, enacted in 1971, requires the removal or encapsulation of lead paint in homes where there are children younger than 6 years of age. The law was amended in 1988 to require that any lead paint abatement be done by a licensed contractor. Because there is a limited number of licensed contractors in the state, the cost incurred by homeowners to delead homes was substantial, as high as \$5,000 per unit in the late 1980s according to the Greater Boston Real Estate Board.

In effort to reduce the cost of lead paint abatement, the Legislature amended the law in 1997 to allow homeowners to complete “low-risk abatement” of lead paint. Examples of low-risk abatement are those types of renovations that generally do not generate lead dust, such as removing and replacing lead-painted doors, cabinets and shelves and encapsulating lead paint surfaces with a liquid polymer. According to the Greater Boston Real Estate Board, allowing the homeowner to complete low-risk abatement reduced the costs of deleading by \$2,500 per unit. Now, with the allowance of “moderate-risk abatement” by homeowners, the cost of removing lead paint will be reduced even more.

The Massachusetts Department of Revenue offers financial assistance to homeowners removing lead from their homes through a \$1,500 state tax credit. For those homeowners who qualify, Massachusetts Housing Finance Agency can provide low-cost financing of loans through its “Get The Lead Out” program.

## “Homeowner Protection Act” Aids Canceling Private Mortgage Insurance

In an effort to limit the overcharging of homeowners for private mortgage insurance, Congress passed the Home Owners’ Protection Act of 1998. Private mortgage insurance (PMI) protects a lender against default by a borrower on low down payment loans. The premiums

licensed deleading contractor is still required if a homeowner has renovations calling for demolition or if ceilings and walls require deleading,

Beginning in March, 2000, workshops covering safety procedures, deleading a borrower is required to pay will vary depending on the size of the down-payment, type of mortgage and the amount of insurance, but an average range for a \$100,000 loan is \$25-\$65 per month.

For all mortgages originated on or after July 29, 1999, the Act requires the lender, at the time of the closing, to provide written notice to the borrower of when PMI may be canceled based on the payment schedule or provide notice that the lender will notify the borrower when the cancellation date is reached. At the time of closing, lenders are also required to notify borrowers of their right to request that lenders cancel their PMI coverage when their loan balance reaches 80% of the original property value. In addition, borrowers are to be notified by their lender that PMI will automatically terminate when the balance of the loan reaches 78% of the original appraised value.

For all mortgages originated prior to July 29, 1999, the Act requires the lender to provide the borrower with a written statement each year detailing the qualifications that must be met in order for PMI to be canceled, along with an address and phone number that the borrower may use to contact the servicing entity to determine if PMI may be canceled.

If borrowers are currently paying PMI and meet the above-mentioned qualifications, they should contact their lender to determine if the PMI coverage can be removed.

## When is a Real Estate Agent Entitled to a Commission?

When is a real estate agent entitled to a commission? The general rule established in *Tristram’s Landing, Inc. v. Wait*, 367 Mass. 622 (1975) provided that a real estate agent engaged by an owner of property for the purpose of finding a purchaser, is entitled to a commission when the agent produces a purchaser ready, willing and able to buy the

options, health effects of lead paint and cleanup methods will be given statewide by private contractors licensed by the state. The cost of these workshops is expected to be between \$100 and \$200.

property according to the terms of the mutually accepted purchase and sale agreement. Also, the transaction must be completed by closing the title in accord with the provisions of the purchase and sale agreement.

An exception to this rule exists when the completion of the contract fails as a result of the wrongful act or interference of the seller. In such an instance, the broker is entitled to receive his/her commission despite the fact that the transaction was not closed.

What remained unresolved was the interpretation of the phrase “wrongful act or interference of the seller.” Is negligence on the part of the seller who ultimately causes a closing not to occur enough of a wrongful act or interference to warrant the payment of the agent’s commission, or must the seller’s conduct constitute bad faith?

This question was recently addressed by a Massachusetts trial court in *Sebell et al. v. Andover Building and Development Corp. et al.* Superior Court, Essex, SS No. 972250A, involving a seller who committed a wrongful act by not obtaining the requisite permits for the foundation and the sewer line before beginning construction on a home. Due to the failure of the seller to obtain the permits, the building inspector issued a cease-and-desist order, halting all construction at the site. As a result, construction on the house was not completed pursuant to the time specified in the purchase and sale agreement, and the buyers legally canceled the agreement to purchase the home.

The court acknowledged the seller’s negligence through his failure in obtaining the requisite building permits prior to construction, but determined that his actions were motivated by a desire to facilitate the closing by expediting the completion of the house. The seller’s acts were in no way a bad faith attempt to deprive the agent of its commission or to interfere with the sale to the buyers on the terms and conditions agreed to. Therefore, an agent is not entitled to a commission on a transaction that fails because the seller negligently failed to obtain a permit needed to complete the

transaction.

Following the rationale of the trial court's decision, a real estate agent would be entitled to his/her commission only if the seller's conduct constituted bad faith, not mere negligence resulting in the failure of the sale transaction. Prior to securing the services of a real estate agent, homeowners should be aware that a commission is due if the sale is not completed as a result of bad faith on the part of the seller.

*The concepts described in this newsletter are general in nature. One must seek competent counsel before implementing any of the ideas described in this newsletter. This newsletter may be deemed advertising under the rules governing lawyers' conduct in Massachusetts.*