

**3740 DAMAGES: TERMINATION OF REAL ESTATE LISTING CONTRACT (EXCLUSIVE) BY SELLER; BROKER'S RECOVERY**

If the real estate listing contract was improperly terminated by the defendant, then you must determine the amount of recovery by the plaintiff.

If you find that the plaintiff had procured a buyer ready, willing, and able to purchase the property upon the terms specified in the listing contract (or on terms acceptable to the owner), then the plaintiff is entitled to recover the commission.

If, on the other hand, you find that the broker had not produced a buyer, then the plaintiff's recovery is an amount sufficient to compensate the plaintiff for his or her losses. That is, those losses which have been proved by the plaintiff to have flowed directly and necessarily from the improper termination of the listing contract by the defendant. In determining this amount, you may take into consideration the time spent by him or her in the performance of the work undertaken on seller's behalf, the difficulties involved, and the plaintiff's standing in the brokerage profession. You may also consider any profits which plaintiff could show would have accrued to the plaintiff had the contract not been improperly terminated, taking into account the probability of procuring a buyer on the seller's terms and all other relevant circumstances.

**COMMENT**

This instruction and comment were originally published in their present form in 1975. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

To recover loss profits, the broker must prove, with reasonable certainty, that he or she would have earned the commission but for the seller's breach.

Sniden v. Laabs, 30 Wis.2d 618, 141 N.W.2d 865 (1966); Peter M. Chalik & Associates v. Hermes, 56 Wis.2d 151, 201 N.W.2d 514 (1972); Winston v Minkin, 63 Wis.2d 46, 216 N.W.2d 38 (1974). [It should ©1994, Regents, Univ. of Wis.

be noted that this is a measure of damages for the breach of a listing contract, not the measure which might be appropriate in an action based on the theory of quantum meruit, though many of the factors considered by the jury would be the same in the two cases.]

See 22 Am. Jur. Damages, § 48 - Effect of Breach on Damages - repudiation; Damages, § 174 - Breach of Contract.