

## Sign an Exclusive Contract With a Mortgage Broker?

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**Many borrowers are reluctant to sign a contract with a mortgage broker that bars the borrower from working with another loan provider. The following letter is typical.**

*“The mortgage broker I contacted asked me to sign an "exclusive agency" agreement that says I won't deal with other brokers or lenders. If I sign this, am I not at the mercy of a single loan provider?”*

**This borrower's concern is understandable, but it is based on an erroneous premise. She is assuming that a borrower can avoid being at the mercy of a single loan provider, which is not the case. She can't wait until the 12<sup>th</sup> hour before narrowing the list of loan providers to one, because so much work has to be done after the selection has been made. At the point where the selection is made, she is at the mercy of one loan provider, whether she has agreed to an exclusive contract or not.**

**No matter how many loan providers a mortgage shopper canvasses before making a selection, once that decision is made, the shopper has granted a de facto exclusive. Once selected, unscrupulous loan providers have multiple tricks they can play to adjust a deal in their favor. Many of the articles I have written over the years fall under the heading of “tricks that loan providers can play after you select them.”**

**Home purchasers must grant an exclusive as they approach the “point of no return”. Given a firm closing date, this is the point beyond which there is not enough time to begin again with another loan provider. Once they pass that point, they can't back out of the mortgage without backing out of the purchase. My file is clogged with letters from home buyers who realized they had been scammed by a lender or broker when they got to closing, but went through with the deal because they didn't want to give up the house they were buying.**

**In principle, those refinancing a mortgage don't have to grant an exclusive because they don't have to close by a specific date. Furthermore, they have 3 business days after they close to rescind the deal and get all their money back. In practice, however, many refinancing borrowers focus on a specific closing date and ignore the right of rescission. For all practical purposes, therefore, those who behave this way have granted exclusivity to the loan provider they have selected.**

**For borrowers dealing with mortgage brokers, exclusivity does not necessarily make the borrower vulnerable to abuse. Broker abuse consists of exorbitant fees, usually paid by the lender for high-rate loans, often without the borrower's knowledge. Borrower's dealing with Upfront Mortgage Brokers (UMBs) protect themselves against such abuse by negotiating the broker's total fee (including that part of it paid by the lender) in advance. *That fee is part of the contract.* The borrower dealing with an UMB pays the wholesale price quoted by the lender, plus the UMB's fee.**

**One of the important services that brokers provide, which does not receive the attention it deserves, is protecting the borrower against lender abuses. As an example, wholesale lenders who operate through brokers don't discover new junk fees to load onto the borrower as deals move to closing, as some retail lenders do. Brokers prevent that, since it hurts their clients without doing anything for the brokers.**

**A borrower dealing with a UMB has a contract with the UMB which stipulates the fee, but it is not necessarily an exclusive contract. If the broker asks for exclusivity, is it in the borrower's interest to agree?**

**I think it is. In exchange for exclusivity, the borrower receives the broker's full attention. In this market, that is no small matter. Brokers are bedeviled by price shoppers and tire kickers, who eat up their time without becoming paying clients. Brokers get paid only when they close loans. If you sign an exclusive, the broker knows that you are prepared to go the distance with him, which provides the maximum incentive for the broker to invest the time needed to get the deal done.**

**Indeed, other things the same, I would prefer a UMB who requires an exclusive. Such brokers generally depend on referrals to overcome the aversion many borrower have to exclusive contracts. Relative to other brokers, they spend less time hustling for clients, and more time working with clients.**

**A home purchaser loses nothing by providing an exclusive near the point of no return, since there isn't time to switch loan providers anyway. Refinancing borrowers can actually have it both ways. They can provide an exclusive, enjoying the broker's full attention to their needs. And in the unlikely event that they have a really bad experience, they can rescind the deal and get their money back, including any monies they agreed to pay in the contract. Federal law trumps the contract.**

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