



## Firing a Sales Representative? Make Sure to Read Your Commission Agreement First

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If you engage the services of a sales representative, **it is important to have a comprehensive commission agreement.** These agreements often focus on issues that arise while the sales representative is working for the principal, such as when a commission is earned, how quickly commissions are paid, and how the payment amount is determined. It is important to also address what happens when the relationship is terminated by either party.

An incomplete commission agreement could lead to unexpected commission payments owed to a sales representative upon termination of the relationship. The Michigan Sales Representative Commissions Act provides that the contract between a principal and sales representative will determine when a commission is due. MCL 600.2961(2). Importantly, courts can distinguish between provisions governing the payments of commissions during the course of the relationship versus after termination.

Where a commission agreement is silent as to the treatment of commissions following termination, the "Procuring Cause Doctrine" applies. The procuring cause doctrine provides that a sales representative earns a commission if her efforts were the procuring cause of the sale, regardless of whether she concluded or completed the sale. *Reed v. Kurdziel*, 352 Mich 287 (1958). Further, where the contract is silent, commissions are "due" when awarded to the company by the customer, not when payment is received or when product is delivered.

For example, imagine a commission agreement providing that commissions are not due until payment is received by the customer, but does not cover when commissions are due in the event of termination. It is possible that a court could apply the procuring cause doctrine to award the terminated sales representative commissions for sales awarded to the company even though the customer has not yet made payment. To avoid this unintended consequence, principals

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should review their commission agreements to ensure termination is addressed.

If you would like to discuss these issues further, or if you have questions regarding your particular commission agreement, please contact Andy Vredenburg, Mike Zahrt or your Foster Swift business attorney.