

Procuring Cause Disputes

Representing buyers can often lead to unintentional and unanticipated disputes between brokers about who is entitled to receive a commission for the buyer's side of the transaction. According to C.A.R. Model MLS Rule 7.13, a listing broker's contractual offer of compensation is accepted by the cooperating broker by **procuring** a buyer that ultimately results in the creation of a sales or lease contract. Payment of compensation by the listing broker to the cooperating broker is contingent upon the final closing. Sometimes a buyer has worked with more than one agent prior to writing an offer on a property. Sometimes a buyer may even submit offers for the same property through different agents at different times. This can create what is called a "procuring cause dispute" over who is entitled to receive the commission. Under the MLS rules, these disputes must be arbitrated between brokers.

What is Procuring Cause?

The National Association of REALTORS® defines procuring cause as the uninterrupted series of events that results in the successful transaction. There is no single action that makes an agent the procuring cause. For example, the first agent to show the property will not necessarily be determined the procuring cause. Similarly, the agent who wrote the accepted offer will not necessarily be determined the procuring cause. Each is merely a relevant factor to be considered by a panel of arbitrators. Arbitrators are advised to consider a multi-factor test, weighing each factor as the situation demands.

How is Procuring Cause Determined?

C.A.R. published a Legal Q&A (Procuring Cause Guidelines) that identifies 25 factors that may be relevant and considered by an arbitration panel when resolving a procuring cause dispute. Typically, procuring cause disputes are between the broker for the agent who received the cooperating commission from the listing broker and the broker for the agent who believes his/her agent was the true procuring cause and should have been paid a commission. In most cases, the arbitrators will decide one broker or the other is the procuring cause. On occasion, the commission will be split, but that is rare.

How Can You Avoid a Procuring Cause Dispute?

For a variety of reasons, it is very helpful for an agent to have a prospective buyer sign a buyer representation agreement. First, it may help the buyer understand the importance of the relationship with the agent and set expectations for the representation. Second, it could be a factor in the event of an arbitration between brokers to determine procuring cause. Finally, if it is an exclusive representation agreement for compensation, it can allow an agent to pursue a commission directly from the buyer.