

A listing agent's right to see your buyer agency contract.

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Does a listing agent have a right to see your buyer agency contract? At the moment, I can't think of a good reason! It is not prerequisite to your being paid a cooperating commission. Your entitlement to that is wholly dependent upon whether you are the procuring cause of the sale. The terms of cooperation, established by your local MLS, make that clear. It is NAR's policy, applicable to Realtor owned multi-list systems, that the only prerequisite to a fee is procuring cause.

The Real Estate Licensing and Registration Act (RELRA) provides that a licensee may not perform a service for a consumer for a . . . commission . . . paid buyer on behalf of the consumer unless the nature of the service and the fee to be charged are set forth in a written agreement between the broker and the consumer that is signed by the consumer. See my article entitled "*Buyer agency contracts: When?*" recently published by your local association.

As noted in the above-referenced article, services may be performed before the employment contract is signed " . . . but the licensee is not entitled to recover a fee, commission or other valuable consideration in the absence of such a signed contract." So, can a listing broker demand to see a buyer agency contract of the broker whose office procured a buyer as prerequisite to payment? I suggest that the answer is no, and I am not aware of any case that has held to the contrary. That a buyer agent is to have a written contract with a consumer in order to be paid is clear from the language quoted from RELRA. But it also flies in the face of the contract establishing payment terms between listing broker and selling broker that are established by the multi-list. Its only predicate is that the buyer agent procured the buyer.

I have no doubt that a buyer agent would not succeed in recovering a commission to be paid directly by the buyer in the absence of a written contract signed by the buyer. So why is a listing broker obligated to pay the fee offered in the MLS to a buyer agent without a contract? Because the relationship between the listing and selling agents are established by the terms of the MLS where there is but one prerequisite to payment: procuring cause.

It is possible then for a selling agent to succeed in Realtor® arbitration against the listing broker who promised to pay a fee, but also face disciplinary charges for not having a written buyer agency contract. Disciplinary charges are handled by the Bureau of Professional and Occupational Affairs which is concerned primarily with the enforcement of RELRA and the Rules and Regulations of the Commission and not interested in terms of cooperation as provided by the multi-list service. Further, in a direct suit filed by a selling broker against a buyer, the broker's efforts would fail because of lack of a signed contract.

The question of whether a listing broker can demand to see a buyer agent's contract should be irrelevant in a world where agency contracts are executed at the beginning of the relationship. No buyer agent should find himself or herself without a contract when an agreement of sale is executed much less when settlement occurs. Yet, it happens.

So, can a listing broker ever demand to see the buyer agency contract? Perhaps there is a situation that would justify it, but none come to mind at this writing. Can buyer agents

demand to see a listing broker's contract? It never happens, but then again it's a rarity for someone to take a listing without also having a signed listing contract. By the way, if the norm is to get a listing contract at the beginning of the relationship, why doesn't that hold true for buyer agency contracts?

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