

PROCURING CAUSE & YOUR PAYCHECK

By Susie Kater



As you know, NAR requires that REALTORS® from different firms arbitrate certain disputes arising out of their relationship as REALTORS®. Most of those arbitrations are commission disputes between two brokers involving the issue of “procuring cause.”

The term “procuring cause” comes from the MLS rule that the cooperating broker that procures a successful buyer for a property is entitled to the commission offered by the listing broker. When there’s a dispute about who’s entitled to the cooperating broker’s commission, the question is, “Who was the procuring cause of the sale?” That question is difficult to answer because there is no hard-and-fast rule. As defined by NAR, “procuring cause” is “the uninterrupted series of causal events that result in the successful transaction.”

Unfortunately, this definition is hard to apply in real life. If one broker was responsible for the unbroken series of causal events, there would be no need for arbitration. An arbitration is usually the result of a break in the chain, and thus, a dispute over who is entitled to the commission follows.

To aid arbitration-hearing panels in deciding the issue of procuring cause between brokers, C.A.R. adopted Procuring Cause Guidelines (as approved by NAR during its November 2002 business meetings) that contain factors for arbitrators to consider when making a procuring cause decision. Factors are simply facts present in a given transaction. The important thing to remember is that no one factor, such as who showed

the property first, who wrote the successful offer to purchase, or who secured a written agency agreement with the buyer, will determine the outcome of the case. Instead, the factors in each party’s favor are weighted as the arbitrators deem appropriate in that particular case.

If you’re involved in an arbitration over a commission, the arbitrators will apply the procuring cause factors to the facts of your case to decide whether you’re entitled to the commission. While arbitrators are human and the facts of a case are almost always convoluted, C.A.R.’s procuring cause guidelines were developed to help different panels reach similar decisions when presented with similar sets of facts. At the very least, if brokers and their salespeople attempt to follow the guidelines, they should have a better chance of being the procuring cause of a sale and securing the cooperating commission.

Factors Chart

C.A.R.’s procuring cause guidelines contain the “factors chart” on p. 28 that presents a compilation of facts that are considered by arbitration panels to help them determine whether the broker who wrote the contract and closed the transaction is, indeed, entitled to the commission as the procuring cause. The chart is not used as a numerical system

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This chart is not a checklist and factors aren't additive—some are entitled to more weight than others. For purposes of the chart, "Intro Broker (IB)" is the broker who did not ultimately write the contract, and "Closing Broker (CB)" is the broker who wrote the contract that was accepted.

	FAVORS			FAVORS	
	IB	CB		IB	CB
Connection to the Transaction					
Buyer is first introduced to the property by Intro Broker	✗		Closing Broker instructed a buyer to go to open houses, made appointments for the buyer, or was aware that the buyer would be going to open houses, and instructed the buyer to inform open house brokers of the buyer's relationship with Closing Broker		✗
Closing Broker never showed the property	✗		Closing Broker instructed the buyer to go and shop with other brokers in the area and return to Closing Broker once the buyer is ready to make an offer on the property	✗	
Intro Broker wrote and presented an offer on the property on behalf of the buyer but the transaction was not consummated	✗		Closing Broker does not belong to the MLS in which the property is listed, or any MLS in a reciprocal arrangement with the MLS, and has not made independent arrangements with the listing broker for a commission	✗	
Closing Broker wrote and presented an offer on the property on behalf of the buyer that was substantially similar to an offer written by Intro Broker within a short period of time	✗		Closing Broker is the listing broker		✗
A significant amount of time elapsed between the time Intro Broker last showed a property and Closing Broker wrote an offer on the same property		✗	Closing Broker is the listing broker and offered financial incentive to the buyer if the buyer came directly to him after the listing broker knew of the involvement of the other broker	✗	
Intro Broker provided significant information about the specific property, its neighborhood, value of the property, financing and other issues over a period of time	✗		Other		
Closing Broker wrote and negotiated the offer and performed all the services during escrow		✗	Intro Broker has an exclusive buyer-broker compensation contract (such as C.A.R.'s Authorization to Acquire Real Property—AAP—or other form used for the same purpose) that contains a description of property, which includes the subject property and is dated before Closing Broker meets with the buyer	✗	
Buyer's Choice					
Intro Broker does not keep in touch with buyer after a period of time		✗	Intro Broker has a non-exclusive buyer-broker compensation contract (such as C.A.R.'s Non-Exclusive Authorization to Acquire Property—NAP—or other form used for the same purpose) that predates the involvement of Closing Broker	✗	
Intro Broker is the listing broker; as a result of Intro Broker providing agency disclosure, the buyer elects to have separate representation		✗	Intro Broker has a buyer-broker representation contract (such as C.A.R.'s Buyer-Broker Representation Agreement—BR—or other form used for the same purpose)	✗	
Buyer is dissatisfied with Intro Broker due to the broker's professional abilities or conduct; examples could include misrepresentations or failure to disclose, lack of knowledge with an area or type of property, being non-responsive to the client/buyer by failing to be timely or return calls, disclosures of conflicts of interest, self-dealing, or negotiating skills		✗	Closing Broker has an exclusive buyer-broker compensation contract (such as C.A.R.'s Authorization to Acquire Real Property—AAP—or other form used for the same purpose)		✗
Broker Conduct					
Closing Broker asked about buyer's relationship with another broker early in the process and determined there was no existing contractual or exclusive relationship between Intro Broker and the buyer		✗	Closing Broker has a non-exclusive buyer-broker compensation contract (such as C.A.R.'s Non-Exclusive Authorization to Acquire Property—NAP—or other form used for the same purpose)		✗
Closing Broker asked about buyer's relationship with other brokers late in the process	✗		Closing Broker has a buyer-broker representation contract (such as C.A.R.'s Buyer-Broker Representation Agreement—BR—or other form used for the same purpose)		✗
Intro Broker was aware that the buyer would be going to open houses and told the buyer to inform other brokers of the buyer's relationship with Intro Broker	✗		Intro Broker failed to give an agency-disclosure statement		✗