Procuring Cause Guidelines

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For a quick overview on this topic, please see: **Quick Guide, Procuring Cause Guideline**

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The following Procuring Cause Guidelines were approved by the C.A.R. Board of Directors and NAR. These Guidelines are intended to assist arbitration panelists in deciding which of multiple brokers is the procuring cause of a given transaction. Use of the Guidelines by any particular local association is strictly voluntary.

I. Introduction

The offer of compensation from a listing broker to a cooperating/selling broker almost always has its source in the MLS rules. The California Model MLS rules provide that "In filing a property with the MLS, the broker participant makes a blanket unilateral contractual offer of compensation to the other MLS broker participants for their services in selling the property…" Rule 7.12. "This broker participant's contractual offer (with or without sub agency) is accepted by the participant/selling broker by procuring a buyer which ultimately results in the creation of a sales or lease contract. ..." Rule 7.13. Therefore, the listing broker's contractual offer is accepted by the cooperating broker "procuring" the buyer. The term, "procuring cause" has taken on a life of its own, however, and many lists and memos have been developed to try to predict the outcome of a given dispute. There are a few key concepts that serve as a baseline, however.

- Procuring Cause is a factors test that *doesn't necessarily have one triggering event* that will give a sure result.
- NAR policy prohibits local associations from adopting a rule that "predetermines" outcomes in commission disputes.
- While a number of definitions of "procuring cause" exist, NAR defines procuring cause as the uninterrupted series of causal events, which results in the successful transaction.

The purpose of these Guidelines is to provide a framework with specific illustrations and guidance so that brokers can train their agents in a manner to minimize disputes and so that panelists hearing those disputes can be more consistent with similar fact patterns.

II. Burden of Proof

The broker who files the arbitration complaint carries the burden of proof to demonstrate, by a preponderance of the evidence, why he or she is the procuring cause of the transaction and is, thus, entitled to the commission (because only brokers can offer and accept compensation under the MLS Rules, the term "broker" will be used throughout this paper to refer to both brokers and their agent salespeople in the proper context). Generally, the broker filing the complaint is the one who does not have the commission. Therefore, in most situations, the broker who does not have the commission in-pocket will have to prove that he or she is entitled to it. In the case in which the complainant did write the contract, however, and arbitration is needed to release funds from escrow, he or she, as the complainant, would have the burden of proof to show why he or she is entitled to the commission.

A number of relevant factors, including the behavior of the involved brokers and the reason the buyer left the first broker, would be used by the panel to decide who gets the commission.

III. Factors Chart

The Factors Chart is a compilation of "facts" that are considered by an arbitration panel to help determine whether the broker closing the transaction is, indeed, entitled to the commission as the procuring cause of the transaction. The factors chart contains factors gathered from many sources that have been used by arbitration panelists for years. It includes factors from NAR materials, C.A.R. materials and case law, as well as general recurring patterns in transactions. The chart should *NOT* be used as a numerical system to give points to one side or the other. In given circumstances, *some factors will not be present; others should be given more weight.* Accordingly, the chart should serve as a guide to raise and consider relevant issues. For purposes of the chart, Intro Broker is the one who did not ultimately write the contract, and Closing Broker is the one who wrote the contract that was ultimately accepted and performed services through escrow to close the transaction. The chart is divided as follows:

A. Connection to the Transaction. Factors 1-7 include the relationship of both brokers to the buyer in this particular transaction. Since a broker must be the procuring cause as it relates to the property and transaction in question, this series of factors focuses on the involvement of the broker.

B. Buyer's Choice. Factors 8-10 focus on why the buyer left the Intro Broker. Relevant factors here are examined to determine if the reason was so justified as to defeat the Intro Broker's procuring cause claim.

C. Broker Conduct. Factors 11-18 focus on the conduct of the Closing Broker. Did the Closing Broker conduct him or herself in such a way that could have prevented the problem? Did the Closing Broker engage in inappropriate conduct that contributed to the "break" in the chain of events started by the Intro Broker that otherwise would not have occurred?

D. Other. Factors 19-24 deal with contractual and other miscellaneous issues that are relevant to the ultimate decision

The factors refer to three buyer representation contracts:

C.A.R. Standard Form BRE, Buyer Representation Agreement-Exclusive (Right to Represent) or other form used by brokers for the same purpose are similar to exclusive right to sell listings except that they describe the property needs of a buyer and give the broker the authority to locate property for the buyer. These contracts provide for payment even if the broker does not locate the property ultimately purchased.

C.A.R. Standard Form BRNE, Buyer Representation Agreement-Non-Exclusive (Right to Represent) or other form used by brokers for the same purpose define the agency relationship and provide for payment to the broker only if the broker introduces the successful buyer to the seller and the transaction is closed.

C.A.R. Standard Form BRNN, Buyer Representation Agreement (Non-Exclusive/Not for Compensation) or other form used by brokers for the same purpose define the agency relationship only and do not provide for any commission rights.

THIS CHART IS NOT A CHECKLIST. FACTORS ARE NOT ADDITIVES -- SOME ARE ENTITLED TO MORE WEIGHT THAN OTHERS.

	Favors Intro Broker	Favors Closing Broker	Comments
Connection to the Transaction			
1. Buyer is first introduced to the property by Intro Broker.	**X**		
2. Closing Broker never showed the property.	**X**		
3. Intro Broker wrote and presented an offer on the property on behalf of the buyer but the transaction was not consummated.	**X**		
4. 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.	**X**		If the two offers are not close in substance or time, this would move to neutral.
5. 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.		**X**	
6. Intro Broker provided significant information about the specific property, its neighborhood, value of the property, financing and other issues over a period of time.	**X**		Although the amount of time spent is not the test, a great amount of activity on this specific property could mean Intro Broker significantly contributed to the buyer's interest in the property.
7. Closing Broker wrote and negotiated the offer and performed all the services during escrow.		**X**	Consideration should be given to how Closing Broker entered the transaction.

Buyer's Choice			
8. Intro Broker does not keep in touch with buyer after a period of time.		**X**	Consideration should be given as to whether the broker attempted to make contact but the buyer would not respond.
9. Intro Broker is the listing broker. As a result of Intro Broker providing agency disclosure, the buyer elects to have separate representation.		**X**	
10. 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.		**X**	

	Favors Intro Broker	**Favors Closing Broker**	**Comments**
Broker Conduct			
11. 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.		**X**	
12. Closing Broker asked about buyer's relationship with other brokers late in the process.	**X**		Brokers have an affirmative duty to inquire about existing relationships.
13. Closing Broker instructed a buyer to go to open houses, or made appointments for the buyer, or was aware that the buyer would be going to open houses, and instructed the		**X**	

buyer to inform open house brokers of the buyer's relationship with Closing Broker.			
14. 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.	**X**		
15. 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	**X**		
16. 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.	**X**		This assumes that Intro Broker does have such an offer through the MLS. However, if the commission has been paid, it might be assumed that the listing broker somehow agreed to compensate Closing Broker.
17. Closing Broker is the listing broker.			Neutral. Although the listing broker will get compensation for the listing side, this should not independently determine the outcome without reference to the other factors.
18. 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.	**X**		
Other			
19. Intro Broker has a Buyer Representation Agreement - Exclusive (Right to Represent)(C.A.R. Form BRE or another form used for the same purpose) that contains a description of property, which includes the	**X**		There is a contractual right between Intro Broker and the *buyer*. Even though it establishes a close connection between Intro

subject property and is dated before Closing Broker meets with the buyer.			Broker and the buyer, the conduct of Closing Broker, and his or her behavior in determining the existence of the contract, will have more weight than the contract itself in a dispute between the *brokers.*
20. Intro Broker has a Buyer Representation Agreement-Non-Exclusive (Right to Represent)(C.A.R. Form BRNE or other form used for the same purpose) that predates the involvement of Closing Broker.	**X**		There is a contractual right between Intro Broker and the *buyer*, if the broker introduced the buyer to a specific property and worked on the buyer's behalf. Even though it establishes a close connection between Intro Broker and the buyer, the conduct of Closing Broker, and his or her behavior in determining the existence of the contract, will have more weight than the contract itself in a dispute between the *brokers.*
21. Intro Broker has a Buyer Representation Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Form BRNN or other form used for the same purpose).	**X**		This contract does not establish a commission right between the buyer and the broker but does help determine the timeframe of the agency relationship.
22. Closing Broker has a Buyer Representation Agreement Exclusive (Right to Represent) an exclusive buyer broker compensation contract (C.A.R. Form BRE or other form used for the same purpose).		**X**	Same as #19, except that this factor may be overcome, in a dispute between *brokers*, if the Closing Broker's behavior was inappropriate in obtaining the contract. There may be a contractual right to be compensated by the buyer.
23. Closing Broker has a Buyer Representation Agreement-Non-Exclusive		**X**	Same as #22 except that the contractual claim

(Right to Represent) (C.A.R. Form BRNE or other form used for the same purpose).			against the buyer would be different because the contract is not exclusive.
24. Closing Broker has a Buyer Representation Agreement (Non-Exclusive/Not for Compensation)(C.A.R. Form BRNN or other form used for the same purpose).			Neutral. Although this demonstrates a commitment to Closing Broker, so does writing up the contract with her.
25. Intro Broker failed to give an Agency Disclosure Statement.		**X**	Any agent who has more than a casual relationship with a buyer should present the buyer with an Agency Disclosure Statement.

IV. Preventive Tips for Practitioners

1. Always ask a prospective buyer whether he or she is working with another broker.
2. If you find out that a prospective buyer is working with another broker, explore whether the first broker has an exclusive contractual agreement.
3. If you discover your client has been working with another broker on the same transaction, try to ascertain the reason why the client left the first broker and if appropriate, make immediate contact with the broker and try to resolve the issue. Failing to address it early on may result in you working through a difficult escrow, closing the transaction and not getting paid.
4. Give agency disclosures (C.A.R. Standard Form AD) early in the transaction.
5. Use buyer representation agreements (with or without the brokers compensation element). This will help memorialize the relationship and help prompt the discussion about other relationships. If the contract includes a buyer's commission obligation to the broker, it will also create an incentive for the buyer to come to you and terminate the contract prior to going to another broker.
6. Never send your buyer client to other brokers with instructions to come back when the buyer is ready to write the offer.
7. Try to accompany your clients to open houses, but if you can't, give your clients your cards and instruct them to tell the agent sitting the open house that they are already working with you and present them your card. By not accompanying them, you take the risk that this explanation may not occur.
8. Stay in close contact with your client and be responsive during the transaction.
9. If you are conducting an open house, keep a registry of all prospective buyers including a note of whether there was a broker with the buyer. Also, keep a record that the agent sitting the open house asked the buyer if they were working with an agent.
10. If you have a listing where the property is being shown by brokers when you are not present, leave a sign-in sheet with buyers' names and brokers' names similar to those at a new home development. Include dates and times in the registry. This creates a record of who was shown the property and with which broker.

V. Fact Patterns

<u>The following fact patterns are NOT to be construed as definitive outcomes for similar real-life situations.</u>
In truth, very few real-life fact patterns would exactly match the ones below, because real-life cases would have nuances and facts that are not and can not be addressed in this paper. All of the facts of a particular case must be considered by a panel to determine procuring cause. The fact situations here are merely a guide for panelists, to demonstrate how the factors are used to determine which broker is the procuring cause.
"Intro Broker" refers to the one who did not ultimately write the offer.
"Closing Broker" refers to the one who wrote the offer that was ultimately accepted and performed services

through escrow to close the transaction. Closing Broker also received the commission.
"Exclusive Buyer's Agency Contract" refers to any contract that creates an exclusive agency between the buyer and the agent, such as the Buyer Representation Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used by brokers for the same purpose. The contract does not have to grant a commission to be exclusive.

FACT SITUATION 1 -- WRITTEN AGREEMENT
FACT SITUATION 1A
Buyer is working with several agents and is shown the property by Intro Broker, but has no written agreement with him or her. Three days later Buyer is shown the same property by Closing Broker, who, after ascertaining that Buyer has no prior buyer's agreement, writes a successful offer and receives the commission.
In the absence of other material facts favoring Intro Broker, the factors favor Closing Broker as the procuring cause. Showing the property first is only one factor. According to the fact pattern, Intro Broker did not write an offer and, since Buyer was working with several agents, may not have spent a significant amount of time with Buyer. Further, the absence of any agency agreement with Intro Broker is a factor that weighs against him. Given the fact that Closing Broker inquired about a prior buyer's agreement, a panel would likely conclude that Intro Broker has not carried the burden of proof and that Closing Broker is the procuring cause and entitled to the commission.

FACT SITUATION 1B
Same as 1A, and in addition, Intro Broker had Buyer sign a Buyer Representation Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Standard Form BRNN) or other form used for the same purpose. This case differs from 1A, in that Intro broker now has an agreement that weighs in his favor. The signed buyer's representation agreement, by itself, however, does not resolve the issue. A panel would need to inquire whether Closing Broker asked Buyer about an agreement with another agent or engaged in other conduct that might create additional factors in Intro Broker's favor. Assuming, however, that there are no additional factors in Intro Broker's favor, a panel could find that Closing Broker is the procuring cause.

FACT SITUATION 1C
Intro Broker had Buyer sign an exclusive buyer's agency contract. Intro Broker showed some properties to Buyer, but not the one that Buyer ultimately purchased. Closing Broker asked Buyer before showing any property to Buyer whether Buyer had signed any buyer's agency contracts or forms other than the agency disclosure form. Buyer replied, "Yes, I signed an exclusive buyer's agency contract, but don't worry about it, show me some property." Closing Broker then obtained Intro Broker's agreement from Buyer and reviewed it. Closing Broker discussed the situation with Buyer: Closing Broker told Buyer the importance of the written agency agreement with Intro Broker and that Buyer was exposed to paying a commission to Intro Broker. Buyer nonetheless insisted on proceeding with Closing Broker and said, "I'll take care of Intro Broker, don't worry." Closing Broker showed Buyer properties. Buyer liked one of the homes shown by the Closing Broker and asked Closing Broker to write an offer. So Closing Broker wrote the offer, which was accepted.
Intro Broker files an arbitration for the commission, claiming Closing Broker interfered with his contract with Buyer. If the panel's inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional facts showing that Closing Broker lured Buyer away from Intro Broker or otherwise engaged in behavior that would create factors favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. Their ultimate conclusion depends on how the panel weighs the various factors. It appears that Buyer may be the culprit here, and if Intro Broker loses the procuring cause question with Closing Broker, Intro Broker still has a contract right to bring an action against Buyer for a commission.

FACT SITUATION 1D
Same facts as 1C, but also the property purchased was one that Intro Broker had previously shown Buyer. This scenario is much more difficult because the factors are more evenly divided between the brokers. The outcome here, however, depends not on the number of factors in a broker's favor, but, instead, on how much weight the panel gives each factor. Having shown the same house helps Intro Broker. Depending on that

factor's weight with the panel, it may well be sufficient to carry the burden of proof for Intro Broker.

FACT SITUATION 1E
Same facts as 1A, but Intro Broker has a Buyer Representation Agreement-Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used for the same purpose with Buyer. Also, Closing Broker fails to ask Buyer if any agency form or buyer broker agreement had been signed with a prior broker, and Buyer doesn't volunteer the information.
In California today, a buyer's broker should always inquire if Buyer has signed any agreement with a prior agent, and if the answer is "yes," find out what that agreement is. In this case, the conduct of Closing Broker, and his failure to determine the existence of a contract, could tip the procuring cause decision in favor of Intro Broker.

FACT SITUATION 2 -- OPEN HOUSES
FACT SITUATION 2A
Buyer has been shown property by Intro Broker, but Intro Broker has no agency agreement with Buyer. Buyer goes alone to Closing Broker's open house, which was previously shown by Intro Broker. Buyer asks Closing Broker to write an offer for Buyer. Closing Broker successfully does so, without inquiring about any prior agency relationship with other agents.
In the absence of other material facts favoring Intro Broker, it appears that the factors favor Closing Broker as the procuring cause. Showing the property first is only one factor. According to the fact pattern, Intro Broker did not write an offer. Further, the absence of any agency agreement with Intro Broker is a factor that weighs against him. Given the facts in this scenario, a panel could conclude that Closing Broker is the procuring cause and entitled to the commission.

FACT SITUATION 2B
Same facts as 2A, but Closing Broker does inquire if Buyer has been working with another agent, and Buyer says" yes," but never mentions that she has seen the house before. Closing Broker determines that Buyer signed C.A.R.'s Buyer Representation Agreement (Non-Exclusive/Not for Compensation) (C.A.R. Standard Form BRNN) with Intro Broker. Buyer asks Closing Broker to write an offer on the property, and Closing Broker successfully does so.
Closing Broker has determined that there is no exclusive agency with Intro Broker and does not know Buyer has seen the property before. Absent other material facts favoring Intro Broker, Closing Broker probably prevails. Of course, the ultimate outcome depends on any other factors present and the weight given to them by the panel.
Note, a question here is whether Closing Broker should have asked Buyer if she had seen the property before. While Closing Broker's knowledge that Buyer had seen the property with Intro Broker is a factor in favor of Intro Broker, the panel will have to decide if it outweighs the other factors in favor of Closing Broker. In the limited facts of this scenario, it probably would not. Closing Broker has determined that Buyer had no exclusive agency with Intro Broker, and showing the property first is only one factor to consider.

FACT SITUATION 2C
Buyer has worked only with Intro Broker and has signed a Buyer Representation Agreement-Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used for the same purpose with Intro Broker. Buyer goes alone to Closing Broker's open house, which Buyer had previously seen with Intro Broker. Closing Broker never inquires if Buyer has a prior agency relationship with another agent. Buyer makes an offer on the same property through Closing Broker.
A buyer's broker should always inquire if Buyer has signed any agreement with a prior agent, and if the answer is "yes," find out what that agreement is. While the fact that Closing Broker closed the deal is a factor in his favor, the conduct of Closing Broker, and his behavior in determining the existence of the contract, particularly since Intro Broker had shown the same property, could tip the procuring cause decision in favor of Intro Broker.

FACT SITUATION 2D
Same as 2C, but Closing Broker inquires and Buyer tells Closing Broker that he/she has not signed any

exclusive agency agreement.
Intro Broker files an arbitration for the commission, claiming Closing Broker interfered with his contract with Buyer. If the panel's inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional material facts favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. It appears that Buyer has lied intentionally to Closing Broker, which could favor Closing Broker. If Intro Broker loses the procuring cause question with Closing Broker, Intro Broker still has the right to bring an action against Buyer for a commission.

FACT SITUATION 3 -- CLOSING BROKER INDUCES BUYER TO LEAVE INTRO BROKER
FACT SITUATION 3A
Buyer is working with Intro Broker and is very interested in a house shown by Intro Broker. Buyer discusses the home with a friend, Closing Broker, who happens to be licensed. Closing Broker says he can get Buyer a better deal, by rebating 1% of his commission to Buyer. Closing Broker shows the property again, and then writes the offer. Closing Broker has no written agency agreement with Buyer.
Absent other material facts favoring Closing Broker, it appears that Intro Broker is entitled to the commission. Closing Broker intentionally interfered with Intro Broker's agency relationship, which is a heavy factor in favor of Intro Broker. Such intentional interference probably overcomes any factors in favor of Closing Broker, and carries the burden of proof for Intro Broker. Whether Closing Broker shows the property again is not a material fact in and of itself.

FACT SITUATION 3B
Buyer has been working with Intro Broker, who has shown numerous houses over a period of several weeks. However, Buyer is dissatisfied with Intro Broker's efforts, and feels it is Intro Broker's fault he hasn't found a property to purchase. While looking at open houses, Buyer meets Closing Broker. Closing Broker inquires of Buyer whether Buyer is working with any other agents. Buyer says yes, and also says, "but I'm not really happy with Intro Broker," and goes on to state why. Buyer is uncertain whether Buyer can in good conscience abandon Intro Broker, but Closing Broker convinces Buyer that it's OK. Closing Broker shows Buyer several homes, but none are appealing, so Buyer asks to see a home previously shown by Intro Broker. Closing Broker successfully writes an offer on that home for Buyer.
Intro Broker has no exclusive agency agreement. However, the reason for Buyer's dissatisfaction with Intro Broker is a material fact in this case, particularly, since it appears Closing Broker may have taken advantage of the situation to sway Buyer's opinion against Intro Broker. If there are no additional material facts favoring Closing Broker, the panel could find that Intro Broker is the procuring cause.

FACT SITUATION 3C
Same facts as 3B, but there is a Buyer Representation Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used for the same purpose with Intro Broker. When Buyer expresses dissatisfaction with Intro Broker's efforts, Closing Broker cautioned Buyer that Buyer may have pre-existing contractual obligations to Intro Broker.
While Intro Broker had an exclusive buyer's agency agreement, Closing Broker made the proper inquiry and counseled Buyer as to Buyer's obligations under the agreement. If the panel's inquiry reveals that Closing Broker did everything necessary to protect both Intro Broker and Buyer, and there are no additional material facts favoring Intro Broker, the panel would probably find that Closing Broker is the procuring cause. If Intro Broker loses the question of procuring cause to Closing Broker, he or she still may have a contractual right to compensation from Buyer.

FACT SITUATION 4 -- INTRO BROKER'S PRIOR OFFER FAILED
FACT SITUATION 4A
Intro Broker has written an offer for Buyer, but it failed and all negotiations on the property were terminated, because Buyer thought the seller's counteroffer was too high. A few days later, Buyer consults with Closing Broker, who convinces Buyer that the seller was not asking too much in light of current market conditions. Closing Broker rewrites the same offer, and when seller counters at a price Closing Broker believes is good, Closing Broker convinces Buyer it is a fair price and successfully writes a counteroffer.
Intro Broker has no exclusive agency agreement. However, showing the property and writing an offer first is a factor here. If the panel's inquiry reveals that Closing Broker wrote substantially the same offer as Intro

Broker, and there are no additional facts favoring Closing Broker, the panel would likely find that Intro Broker is the procuring cause.

FACT SITUATION 4B
Same as 4A and, in addition, Intro Broker had a Buyer Representation Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used for the same purpose with Buyer, which had not expired at the time of Closing Broker's writing the offer for Buyer. Buyer did not volunteer that he had an agency agreement with Intro Broker, and Closing Broker did not ask.
Intro Broker did have an exclusive buyer's agency agreement, and Closing Broker failed to make the proper inquiry. In addition, Intro Broker's prior offer on the property is a factor in his or her favor. If there are no additional material facts favoring Closing Broker, the panel could find that Intro Broker is the procuring cause. If Intro Broker loses the question of procuring cause to Closing Broker, he or she still may have a contractual right to compensation from Buyer.

VI. Frequently Asked Questions

Q1. Does the arbitration always result in an "all or nothing" award or may arbitrators split the award between the two disputing brokers?
A1. In most cases, sound analysis will lead arbitrators to conclude that only one broker was the procuring cause, and that broker should get the entire commission. Further, arbitrators should not avoid the "all or nothing" decision, just because it is a hard one to make. Nonetheless, after all factors have been weighed, under some fact patterns, arbitrators may decide to split the commission.

Q2. Must a listing broker be named as a party to an arbitration complaint when he or she has contractually offered the commission to other brokers through the MLS?
A2. Although the listing broker offered the compensation, generally, only the disputing cooperating brokers are necessary parties to the arbitration. A listing broker can be named, however, and it is up to the complainant to determine the proper parties to the complaint.

Q3. Must the respective responsible brokers for the agents in a commission dispute be named in the arbitration complaint?
A3. California Code of Ethics and Arbitration Manual require that the responsible broker be named as a complainant to an arbitration complaint. There is no similar requirement for the respondent, but it is advisable to have the responsible brokers on both sides of the dispute.

Q4. Does a broker with a Buyer Representation Agreement - Exclusive (Right to Represent) (C.A.R. Standard Form BRE) or other form used for the same purpose with the buyer need to go through arbitration?
A4. Yes. There are factors, which taken together, can outweigh the exclusive buyer-broker contract.

Q5. Are these guidelines a "predetermination of entitlement" to a commission, which is prohibited under NAR policy?
A5. No. The guidelines are merely factors to be considered in light of the specific facts of the case.

Q6. Where can additional information regarding the topics discussed in this memorandum be obtained?
A6. This legal article is just one of the many legal publications and services offered by C.A.R. to its members. For a complete listing of C.A.R.'s legal products and services, please visit car.org/legal.

and Saturday, 10 a.m. to 2 p.m. C.A.R. members who are broker-owners, office managers, or Designated REALTORS® may contact the Member Legal Hotline at (213) 739-8350 to receive expedited service. Members may also submit online requests to speak with an attorney on the Member Legal Hotline by visiting Legal Hotline on car.org. Written correspondence should be addressed to: CALIFORNIA ASSOCIATION OF REALTORS®, Member Legal Services, 525 South Virgil Avenue, Los Angeles, CA 90020.

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