

## Procuring Cause: A Primer For Realtors®

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The “procuring cause” rule is simple in theory, but complicated in application. It is used to determine a buyer broker’s entitlement to the “offer of compensation” (i.e. a percentage share of the commission offered by the listing broker on the multiple listing service). All Realtors® must publish an “offer of compensation” in their listings, so that other members are informed, up-front, how much they will receive, should they produce a ready, willing and able buyer, who closed the transaction.

To be clear, listing brokers do not have to prove they were a procuring cause of the sale – they have the written listing contract that essentially guarantees them a commission, even if they do nothing more than take the listing and place it in the MLS.

However, the buyer’s broker, who in most cases does not have a written service agreement with their client, generally must “prove” that their activity resulted in the sale, should a dispute arise between two buyer brokers claiming the compensation offered in the MLS. If there is no dispute, the buyer’s broker simply informs escrow of the amount of commission they are entitled to, and – assuming there is no disagreement with the listing broker over the figures – waits for closing to collect their share of the commission.

When disputes occur between competing buyer brokers, it usually means that the buyer-client spent time first with one broker, who may have introduced them to the offered property, but then the buyer began working with a second broker (occasionally without the knowledge of the first buyer broker), who wrote up and submitted the offer that ultimately resulted in a closing of the sale.<sup>1</sup>

According to the NAR:

A broker is regarded as the "procuring cause" of a sale, so as to be entitled to a commission if his or her efforts are the foundation on which negotiations resulting in a sale begin. It is the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime

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<sup>1</sup> Lest one conclude that the procuring cause rules create a “wild-wild west” atmosphere, where buyer brokers can steal clients from one another, it is important to know that both the NAR ethical rules, and the Oregon state licensing statutes, prohibit intentional interference with another broker’s client.

objective of the employment of the broker who produces a ready, willing, and able purchaser to buy real estate on the owner's terms.<sup>2</sup>

Since commission disputes between NAR members must be heard and decided pursuant to its [Code of Ethics and Arbitration Manual](#), Realtor® members need to understand these rules if they are to sit on an arbitration panel deciding between competing brokers which one is entitled to the “buy-side” commission. Additionally, for rank and file Realtor® members, understanding the procuring cause rules are important to know, so they can protect themselves in an effort to avoid commission disputes.

Accordingly, here are the applicable NAR directives on dealing with procuring cause disputes.

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<sup>2</sup> One might liken the process to the falling of an entire row of dominos from the first to the last. If there is a break in the process it interrupts the “continuous” nature of the series of events leading up to the closing.