

## Procuring Cause Guidelines

According to C.A.R. Model MLS Rule 7.13, a listing Broker's contractual offer is accepted by the cooperating broker by procuring a buyer which 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 when more than one agent has worked with a buyer whose offer was accepted by the seller and ultimately resulted in a closed transaction triggering a commission obligation, it is unclear which agent procured the buyer. Any dispute between Participants arising out of this section shall be arbitrated.

NAR defines procuring cause as the uninterrupted series of events, which results in the successful transaction. There is no single action which makes an agent the procuring cause. Thus, the first agent to show the property is not necessarily the procuring cause. Similarly, the agent who wrote the offer which was accepted is not necessarily the procuring cause. Each however is a relevant factor to be considered. A panel of arbitrators should consider a multi-factor test, weighing each factor as the situation demands.

C.A.R. has written a Legal QA, titled "Procuring Cause Guidelines" which identifies 25 factors that may be relevant in a procuring cause dispute. Typically, these 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 of the sale and should have been paid. 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.

Is it helpful for an agent to have a prospective buyer sign a buyer representation agreement? Yes, for two reasons. First, it may be an important factor for the arbitrators to consider in deciding the case. Second, it may establish independent grounds for the broker to pursue the buyer directly, regardless of the outcome of the procuring cause case.