



Is the builder considered the procuring cause if my buyer answers a question on the builder's website?

Release Date: 1/7/2021

John Wait, Martin & Gifford, PLLC

QUESTION: A builder in our MLS has a website with a drop-down menu that asks potential buyers, "How did you hear about us?" None of the options include "broker" or "REALTOR®." Every time one of my buyers visits the website and answers the question, the builder will refuse to pay the cooperating commission in the MLS, even if the buyer is under an exclusive agency agreement and I assist the buyer through the transaction. This builder does the same thing if my buyer visits their property without my being there. When I've confronted the builder in the past, they claim that they are the procuring cause in these cases and therefore have no obligation to pay. Is the builder correct?

ANSWER: It is possible that the builder is not the procuring cause. However, this issue will need to be decided on a case-by-case basis by an Arbitration Hearing Panel in your local board.

In an arbitration dispute, many factors are weighed by the panel to determine who is the "procuring cause." A precise definition of procuring cause is difficult, but it can generally be defined as the cause originating a series of events which, without break in their continuity, result in the accomplishment of producing a ready, willing, and able purchaser to buy real estate on the owner's terms. A couple of the factors to be weighed by the panel to answer this question are:

1. Was an offer of compensation made through the MLS or otherwise?
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?
3. How was the first introduction to the property that was sold/leased made?
4. When was the first introduction to the property that was sold/leased made?
5. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?

You can read all the factors [here](#) in the Arbitration Worksheet. Based on the number of factors in the worksheet, it seems unlikely that a buyer's answering one question on a drop-down menu online would be determinative. And, just because a buyer visits the builder's property without you doesn't mean that the builder is the procuring cause. If you believe that this builder is improperly claiming that you are not due a commission advertised in the MLS, you should consider consulting with legal counsel and filing an arbitration dispute.

NC REALTORS® provides articles on legal topics as a member service. They are general statements of applicable legal and ethical principles for member education only. They do not constitute legal advice. The services of a private attorney should be sought for legal advice.

© Copyright 2021. North Carolina Association of REALTORS®, Inc. This article is intended solely for the benefit of NC REALTORS® members, who may reproduce and distribute it to other NC REALTORS® members and their clients, provided it is reproduced in its entirety without any change to its format or content, including disclaimer and copyright notice, and provided that any such reproduction is not intended for monetary gain. Any unauthorized reproduction, use or distribution is prohibited.