

How to Avoid Arbitration and Commission Disputes

The best way to avoid arbitration is to minimize any possibility that disagreements or disputes will arise. While it is impossible to avoid disagreements under all circumstances, certain "common sense" steps can be taken by listing and cooperating brokers to ensure that cooperative transactions proceed smoothly.

Listing Brokers

- When taking a listing, ask whether the property was previously listed or is now listed?
- If the property was previously listed, is there a "broker protection clause" in effect? Are there certain named prospects reserved? Does the "broker protection" terminate if the property is relisted?
- Ensure that cooperative compensation for your listings is accurately published in MLS.
- If your listing is not in MLS, be sure that potential cooperating brokers understand your compensation offer prior to commencing their cooperative efforts.
- Communicate changes in compensation offers promptly.
- Be sure that the disposition of forfeited earnest money is clearly addressed in listing contracts.
- Remember that MLS rules may provide that cooperating brokers, after making reasonable efforts to contact listing brokers, can deal directly with sellers unless direct contact has been expressly prohibited by the listing broker.
- Be sure that associates who provide information about your listings are properly prepared/informed.
- Present offers promptly.
- Communicate counteroffers promptly.
- Allow cooperating brokers to be present when offer is presented.
- Be sure that cooperating brokers are informed if the seller refuses to permit them to be present at the presentation of an offer.
- During open houses, have a sign-in roster for buyers and cooperating brokers.
- During open houses, ask buyers "Are you represented?" "Are you working with another broker (firm)?"
- Consider mediation.
- Return telephone calls promptly.
- The fact that a purchaser may have seen a property at an open house does not, in and of itself, determine procuring cause.
- Keep accurate written, contemporaneous records, notes and documentation, including all appointments, showings, meetings, and conversations.
- After an offer is accepted, keep the parties informed as the transaction moves to closing.

Cooperating Brokers –

- Before entering into a buyer representation agreement, determine whether the buyer was subject to a prior agreement. Is the buyer currently represented? Is there any residual obligation for the buyer to compensate another broker?
- Prequalify purchasers.
- Realize that "blanket consent" to show other brokers' listings does not exist unless expressly granted by the listing broker.
- If at all possible, accompany the buyer to the showing. If unable to accompany the buyer to the showing, be sure the listing broker realizes that the buyer is represented.
- If there is any question, use reasonable efforts to determine whether a property is or was listed.
- Ask whether the buyer has been previously introduced to a property. By whom? When?
- Be sure the listing broker is informed if the buyer refuses to permit the listing broker to be present at the presentation of a counteroffer.
- Allow listing brokers to be present when counter-offers are presented.
- Communicate offers promptly.
- Present counteroffers promptly.
- Consider mediation.
- Return telephone calls promptly.
- If a listing is not in MLS, verify the terms of compensation, if any, that are being offered by the listing broker prior to commencing your cooperative efforts.
- Keep accurate written, contemporaneous records, notes and documentation, including all appointments, showings, meetings and conversations.
- After an offer is accepted, keep the parties informed as the transaction moves to closing.
- Remember that the existence of an established agency relationship does not, by itself, determine procuring cause.

Taken from NAR's 2010 Advanced Professional Standards Seminar, Chicago, IL August 2010.