

Commission Disputes and Procuring Cause Litigation: Legal Considerations for Residential Brokers and Agents

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In New Jersey's competitive housing market, disputes over real estate commissions are a significant source of litigation for brokers and agents. These disputes often arise when parties terminate a brokerage relationship, multiple brokers claim the same commission, or a transaction closes under unexpected circumstances. For brokers and agents, understanding the legal framework for commission disputes is critical to managing risk.

agents must invest time and resources in gathering records, responding to discovery demands, and participating in arbitration or litigation. Therefore, a clear understanding of procuring cause, contractual rights, and potential dispute triggers is essential to prevent these issues.

Procuring Cause: The Legal Framework Governing Commission Entitlement

At the core of many commission disputes is the doctrine of “procuring cause”. Under New Jersey law, courts do not determine who the procuring cause of a sales or lease transaction is by a single act, such as who first showed a property or who prepared the final contract. Instead, they examine whether a broker’s efforts initiated an uninterrupted series of events that resulted in the completed transaction.

In evaluating procuring cause matters, decision-makers typically consider factors such as:

- The nature and extent of each broker’s involvement with the buyer or seller
- Whether there were breaks in continuity in the transaction process
- Whether the buyer or seller abandoned one broker and later resumed negotiations independently or through another broker
- Whether the conduct of another broker improperly interfered with an existing brokerage relationship

Because this analysis is highly fact-specific, procuring cause disputes are inherently unpredictable. Brokers and agents should understand that even well-intentioned changes in representation can create legal exposure.

Termination of Brokerage Relationships: Legal Risk Does Not End With Termination

Terminating listing agreements or buyer-broker relationships is a frequent source of commission litigation. Legally, termination does not automatically extinguish a broker's commission rights. Brokers often claim their pre-termination efforts were the procuring cause of a sale, especially if it closes shortly after termination with a party the broker previously introduced.

These disputes often focus on:

- The contractual language governing termination and protection periods
- The timing of the transaction relative to termination
- The extent of the broker's involvement prior to termination

For brokers, this underscores the importance of clear contractual provisions and careful documentation of transactional activity, especially when parties terminate a brokerage relationship.

Co-Brokerage and MLS-Related Disputes

Disputes between cooperating brokers are also common. Although MLS rules and published commission splits seem to resolve entitlement, disagreements often arise when one broker alleges their counterpart's involvement was minimal or that the transaction deviated from the original plan.

Absent clear written agreements addressing roles and commission allocation, these disputes can quickly escalate into arbitration or litigation, increasing the cost and complexity of the transaction after closing for all involved brokers and agents.

Documentation and Disclosure: Critical Evidence in Commission Disputes

Documentation is central to nearly all commission disputes. In litigation, contemporaneous written records are often the deciding factor in procuring cause claims.

Key materials include:

- Listing agreements and buyer-broker agreements
- MLS records and commission disclosures
- Emails, text messages, and other communications with clients and cooperating brokers
- Records of property showings, negotiations, and transaction milestones

Arbitration and Litigation Considerations

Many commission disputes require mandatory arbitration under MLS or association rules, while others proceed to court depending on the claims. Each forum has distinct procedures, evidentiary rules, and costs.

Early legal analysis helps brokers and agents determine whether to seek an early resolution or pursue a more aggressive litigation strategy, especially when claims lack legal or factual support.

Practical Legal Takeaways for Brokers and Agents

From a risk-management perspective, brokers and agents should approach commission issues proactively:

- Brokers should ensure that all brokerage agreements clearly address commission entitlement, termination rights, and protection periods
- Brokers and agents should maintain clear, professional communications and preserve transaction records
- Brokers and agents should handle changes in representation deliberately and with an understanding of potential commission exposure.

Conclusion

Commission disputes and procuring cause litigation often stem from ambiguous agreements and transactional misunderstandings. For brokers and agents, the most effective way to mitigate risk is to understand how the legal system analyzes commission entitlement and to address potential issues before they escalate.

This alert provides a general overview of issues commonly involved in commission disputes and procuring cause litigation. Please contact Michael Shortt at Saiber LLC if you have questions regarding commission entitlement, procuring cause claims, or strategies for managing and resolving residential real estate disputes.