

Hello Michigan Realtors® I'm Rebecca Gean and welcome to our very first installment of "From the Mailbag!" While we continue to field many requests for Letter of the Law topics, we have also noted the extremely positive reaction to the "Legal Hotline Companion" which you all received in the mail this February. Building off the success of that Q&A format, we'll be looking at questions "From the Mailbag" from time-to-time. Our first two questions align with this month's Letter of the Law, centering on a commonly misunderstood area regarding rights and expectations related to the negotiation of a commission. \*\*\*

QUESTION: I am the listing broker. My seller-client just received an offer from a buyer that states that the listing broker must pay the buyer's broker, who is not an MLS participant, a \$2,500 referral fee. I thought that an agent's commission cannot be negotiated in the buy/sell agreement. \*\*\*

ANSWER: You are correct that a buyer's broker cannot negotiate his/her commission in the buy/sell agreement. The listing broker is not a party to the buy/sell agreement. So the buy and sell agreement cannot obligate the listing broker to pay the buyer's broker a referral fee. But if the buyer's broker contract obligates the buyer to pay his buyer's broker a specific amount, such as a \$2,500 referral fee, then the buyer can attempt to pass on that obligation to the seller in the buy/sell agreement. It would be the same as the buyer requiring the seller to pay for buyer's title insurance. In this situation, the buyer's broker would not be negotiating his compensation with the listing broker. It is the buyer that would be using the buy/sell agreement to try and get the seller to take over the buyer's payment obligation. \*\*\*

QUESTION: I am a buyer's broker. My client is putting in an offer on a house where the listing broker is offering cooperating compensation in the amount of 2 ½%. My deal with my buyer has always been that I will get 3%. Can we include this requirement in the buy/sell agreement? \*\*\*

ANSWER: It depends on what you mean by "my deal with the buyer." If your buyer's broker contract explicitly states that the buyer must make up the difference if the commission offered is less than 3%, then your buyer may include a provision in the buy/sell agreement which states the seller would agree to assume the buyer's obligation to pay you an additional ½%. Keep in mind though that this negotiation would not affect the listing broker's contractual rights under the listing contract. If the listing contract called for 6%, the cooperating split offered by the listing broker through the MLS was 2 ½%, and the buyer passed on that ½% obligation to the seller, then the seller would be contractually obligated to pay a total commission of 6 ½% -- *i.e.*, 6% to the listing broker and ½% to you. You would collect a ½% from the seller and 2 ½% from the listing broker.\*\*\*

We hope you've enjoyed this first installment of "From the Mailbag." Based on input from you as well as the Michigan Realtors Legal Hotline, we'll continue to work on legal content to help you as a Realtor®. Thank you for watching!