

Hello Michigan Realtors® and welcome back to “From the Mailbag!” Our first installment of 2025 dovetails with our recent Letter of Law video which addressed the disclosure of compensation amounts. Today, we’ll take a look some of the popular questions we’ve received on that topic. With no further ado, let’s dive into some questions from the mailbag!

Question 1: I have been a licensed salesperson for many years and have always understood that I cannot use the purchase agreement to negotiate a commission. Has this rule changed?

Answer 1: In short, nothing has changed. If the listing broker is the payor and the buyer’s broker is the payee—as was traditionally the case with offers of compensation through the MLS— then you **CANNOT** use the purchase agreement to negotiate the commission (because neither broker is a party to the purchase agreement). The same is true today with “off MLS” commission negotiations between the listing broker and the buyer’s broker. You cannot use the purchase agreement for that negotiation (because those brokers are not parties to the purchase agreement). Instead, you will need a separate agreement between the two brokerages. However, if the **SELLER** is agreeing to directly pay all or part of the buyers’ payment obligation (to their buyer broker), then that negotiation can (and should) be part of the purchase agreement.

Question 2: My listing agreement requires the seller to pay me a 3% commission but says nothing at all about payment to a buyer’s broker. We received an offer contingent upon the simultaneous execution of a broker-to-broker contract requiring me to pay the buyer’s broker a 2% commission. I signed this broker-to-broker contract with the seller’s written authorization. We are now coming up to closing and the seller will not pay me a 5 % commission.

Answer 2: The seller is not obligated to pay you more than the agreed-upon 3% commission unless you amended the listing contract to require the additional amount. The listing contract and the broker-to-broker contract are separate agreements. The broker-to-broker contract (where you agreed to share your commission) did not automatically increase the seller’s obligation to pay you under the listing contract. A seller is only obligated to pay a listing broker what is agreed upon in the listing contract.

Question 3: My buyer’s broker contract requires my buyers to pay me a 2% commission. My buyers have asked that this obligation be passed on to the listing broker or the seller. My buyers have found a home, and the listing broker for that home says that the seller has only authorized a 1% commission. The listing broker has presented me with a broker-to-broker contract agreeing to the

1%. If I sign that broker-to-broker contract, are my buyers obligated to pay me the additional 1%?

Answer 3.: Yes. However, if your buyers have previously instructed you to assist them in passing on their entire commission obligation to the listing broker or seller, you should make sure that your buyers understand that they will have this obligation so that they can structure their offer accordingly (maybe by asking the seller, via the purchase agreement, to make up the difference).

That wraps up this edition of From Mailbag. For more information on the disclosure of compensation amounts, be sure to check out the other videos in our series on the settlement practice changes. As always, we welcome your questions and any suggestions for future topics. Thanks for watching, and we'll see you next time!