

IAR LEGAL HOTLINE



MULTIPLE LISTING SERVICE

Did you know that there is a Handbook on Multiple Listing Policy issued by the National Association of Realtors®? Here are some of the questions we have recently received to which answers can be found in the MLS Policy Handbook. Please remember that the Legal Hotline is available to assist managing brokers and their designated agents between the hours of 9 a.m. and 5 p.m., Monday through Friday.



Q: I represented the buyer in a transaction where the seller agreed in the Purchase Agreement to pay \$3,000 toward the buyers' closing costs. When I received my commission check, it was based on the amount of the sale after the closing costs were deducted. I was expecting my commission to be based upon the total sales price. What amount should have been used?

A: The answer depends upon how the multiple listing service in which the property was advertised defines cooperative commission. Most listing services in Indiana define the co-op to be either a flat fee or a percentage of the gross sales price. However, as indicated in the Multiple Listing Policy, the multiple listing service may choose to make the co-op commission based upon the net sales price, after builder upgrades or seller concessions. If that is the case, then it is also up to the listing service to define what items would be considered as builder upgrades and seller concessions as they are not defined by Indiana law. The following policy on Commission/Cooperative Compensation Offers can be found at Note 1 to Section 1 of G of the Handbook on Multiple Listing Policy:

The compensation specified on listings filed with the multiple listing service by the participants of the service shall be expressed as a percentage of the gross sales price or as a definite dollar amount. Multiple listing services may, as a matter of local discretion, allow participants to offer cooperative compensation as a percentage of the net sales price, with net sales price defined as the gross sales price minus buyer upgrades (new construction) and seller concessions (as defined by the MLS unless otherwise defined by state law or regulation).

If a listing broker intends to pay any commission amount that is different than what is indicated on the multiple listing service, then the different commission amount must be communicated to the cooperating broker in writing in advance of an offer being submitted.

Q: Listing brokers must indicate in the multiple listing whether the property that is being offered has a variable rate of commission or not. What does variable rate mean?

A: A variable rate commission arrangement is one in which the seller agrees to pay a specified commission if the property is sold/leased by the listing broker without assistance from another broker (i.e. a me-me transaction); and a different commission if the sale/lease results through the efforts of a cooperating broker. (Handbook on Multiple Listing Policy, Section 5.3 of Sections C and F).



Q: I just had a buyer's broker tell me he wants to be present when I present the offer he submitted to my client, the seller. There is no way that is allowed, is there?

A: Cooperating participants or their representatives have the right to participate in the presentation of any offer they secure to purchase or lease to the seller or lessor; and, listing participants or their representatives have the right to participate in the presentation of any counter-offer made by a seller or a lessor. (Note that this would not include being present during any discussion of said offer or counter-offer). However, if the client (buyer or seller) gives written instructions that cooperating brokers may not be present at the time an offer or counter-offer is presented to them then such requirement is waived and cooperating brokers have a right to a copy of those instructions. (Handbook on Multiple Listing Policy, Sections 9 and 10 of E, Participant's Rights).

If you have further questions, please call the IAR Legal Hotline. As a reminder, the IAR Legal Hotline is available to Managing Broker members and their designated agents between the hours of 9am and 5pm, Monday through Friday. Call 1-800-444-5472 or complete the [online form](#). MBs, need to designate an agent to use the Legal Hotline? [Do it online here.](#)