



WASHINGTON REALTORS®

Legal Hotline Q&A of the Week

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Question:

If a potential Seller reaches out to me and wants me to list their property for sale but not offer a Buyer Broker Compensation, are there any ramifications if I choose not to take the listing?

Answer:

If broker is choosing not to take the listing because the seller is not offering buyer broker compensation, broker should re-think broker's position. There are a lot of good reasons for a broker not to take a listing. Perhaps the seller is unrealistic with respect to the value of the home. Perhaps the seller wants the broker to conceal defects that listing broker cannot conceal. Perhaps seller wants to negotiate in a way that makes listing broker uncomfortable. Perhaps listing broker just doesn't like seller and doesn't want to work for seller. But if the reason broker refuses the listing rests solely on the fact that seller doesn't want to offer buyer broker compensation, broker should re-think any decision not to take the listing.

Based on state and federal law as well as MLS and REALTOR® policies, no seller is required to offer compensation to a buyer broker. Forcing a seller to offer compensation to a buyer broker violates antitrust law. If the last five years have taught the industry anything, that is the lesson. Everyone in the industry may not agree with that conclusion but at least one federal district court judge reached that conclusion and it remains the foundation for changes in industry protocols. Thus, when broker tells a seller "you have to offer compensation to a buyer broker or I refuse to do business with you" broker incorporates and perpetuates policies and practices that violate anti-trust law, into the heart of broker's individual business. Policies and practices that every REALTOR® MLS and association have chosen to shed because they are deemed unfair, are the policies and practices on which broker chooses to base business decisions. That is unwise.



Instead, broker should talk to seller and help seller understand the many benefits that flow to seller from a buyer having competent representation. For example, a competently represented buyer is a buyer whose financial qualification to purchase seller's home is confirmed before an offer is made, who understands the operation of the forms and timelines and the importance of taking necessary actions in a timely manner to move the transaction along, who has the ability to inspect seller's home without exposing seller or listing broker to unwanted information and who has the industry connections to get all of the many tasks required of a buyer accomplished in time for closing. Broker should help seller to understand that incentivizing a buyer to come to the transaction with competent representation could actually help seller market and sell the property. However, if seller ultimately chooses not to offer compensation to buyer broker then listing broker should consider whether seller's property is nevertheless marketable.

If seller lists the property at the given price but doesn't offer buyer broker compensation, is it nevertheless likely that the property will sell? If so, why wouldn't broker list the property? Broker should counsel seller to consider that any offer may include a request for seller to pay compensation to the buyer's broker and broker should encourage seller to keep an open mind about how that transaction would work. If a viable buyer requires seller's assistance to compensate buyer's broker, then seller should understand that seller may need to incorporate compensation to buyer broker into the transaction terms even if no offer is made to buyer broker at the time of listing.

There may be good reasons, in addition to seller's refusal to offer compensation to buyer broker, justifying broker's preference not to list seller's property. If those reasons are compelling, then broker should not list seller's property. However, if the only reason that broker chooses not to list seller's property is because seller chooses not to offer buyer broker compensation as part of seller's listing, then broker should reconsider broker's position. It was that very reasoning, at an industry wide level, that resulted in litigation and ultimately a settlement costing members of the real estate industry millions of dollars.

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