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PROCURING CAUSE FACTORS

Whether a broker is the procuring cause of a sale must be factually determined on a case-by-case basis. Many factors can impact a determination of procuring cause, but no one factor is by itself determinative. Procuring cause is in fact the interplay of factors which together demonstrate that the unbroken efforts of a specific broker were responsible for the buyer making the decision to consummate the sale on terms which the seller found acceptable. In other words, a broker who is the procuring cause of a sale is a sine qua non of the sale -- the sale would not have occurred but for the broker's efforts.

When reviewing the factors, it is important to note that the occurrence of any particular factor in a fact situation does not necessarily mean that procuring cause does or does not exist. This is because it is the interplay of factors that is so important in recognizing procuring cause, not the presence of any one factor alone. A specific factor can, in fact, cut either way, depending on its importance compared to the other factors in the case and depending on when it occurs in the timeline of the case.

Procuring cause factors may be grouped, for organizational purposes, into nine different categories. These categories are:

- The nature and status of the transaction
- The nature, status and terms of the listing agreement or offer to compensate
- The roles and relationships of the parties
- The initial contact with the purchaser
- The conduct of the broker or agent
- Continuity and breaks in continuity
- The conduct of the buyer
- The conduct of the seller
- Other information

OTHER INFORMATION: The parties to an arbitration hearing may have witnesses and present evidence for consideration by the hearing panel as so outlined on the NAR Code of Ethics and Arbitration Manual.

SUMMARY: There are a great number of factors to consider when determining procuring cause. However, it is just as important to remember that no automatic conclusions should be drawn from the presence or absence of any one factor. Procuring cause is not always achieved by introducing the parties. It is not always achieved by finalizing the transaction. No preconceived formula or rule should be used to determine procuring cause. Rather each factor should be weighed in conjunction with the other factors relevant to the case. In short, arbitration panels and each party must remember that the above factors are simply considerations, not conclusions.

Source: National Association of Realtors®

H://COE/ProcuringCause