



# PROCURING CAUSE DISPUTES

California Association of REALTORS®

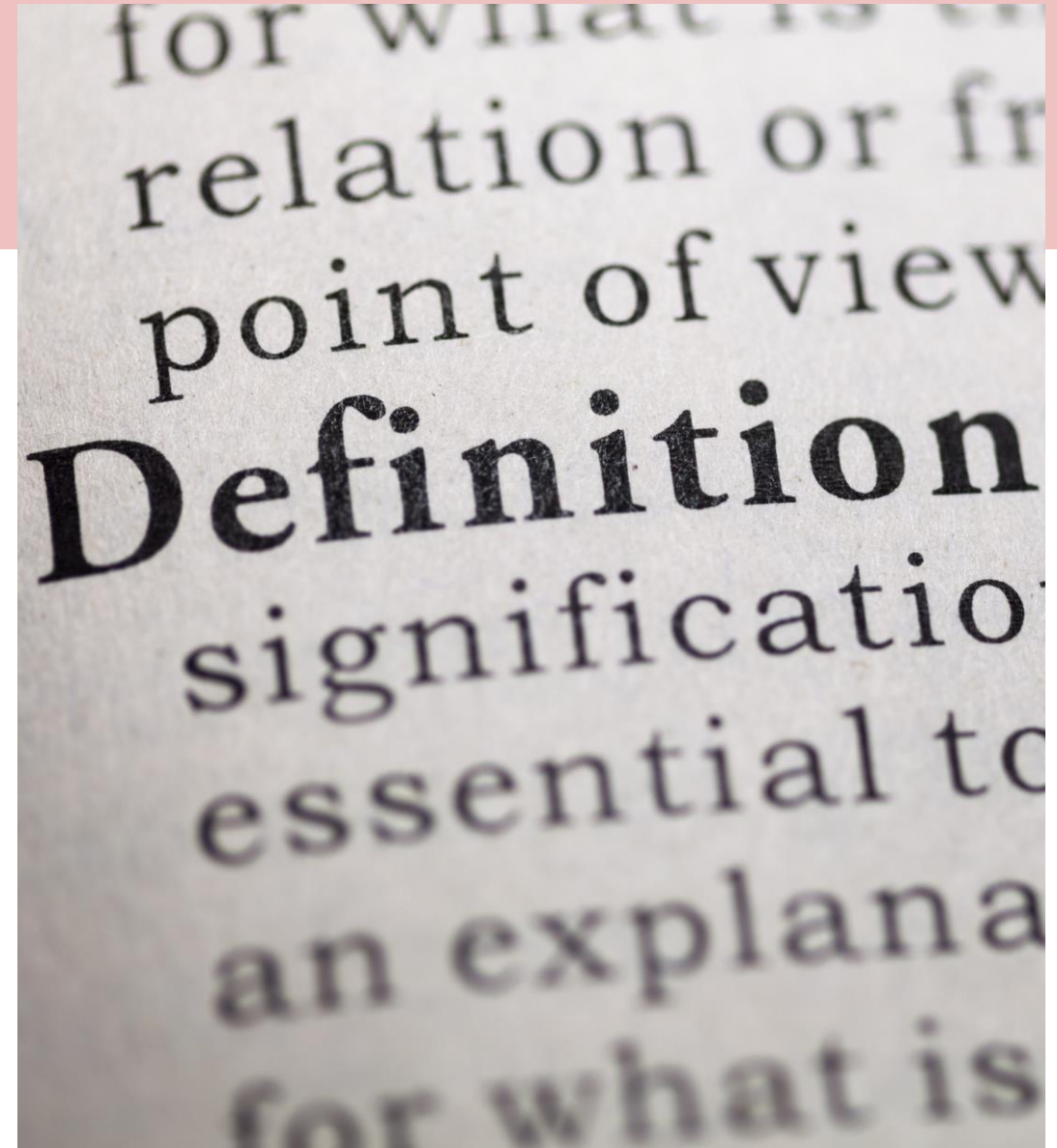


# MLS AND OFFERS OF COMPENSATION

- Offer of compensation generally made in MLS and governed by its rules
- **CA Model MLS rule 7.12** “In filing a property with the MLS, the broker participant makes a blanket unilateral contractual offer of compensation to the other MLS broker participants...”
- **CA Model MLS rule 7.13** The offer of compensation is accepted by the cooperating/buyer’s broker “by *procuring a buyer*, which ultimately results in the creation of a sales or lease contract.”

# PROCURING CAUSE

- **NAR Definition** – “the uninterrupted series of causal events, which results in the successful transaction.”
- A factors test that ***doesn't necessarily have one triggering event*** that will give a sure result.
- Procuring cause disputes occur when more than one agent asserts they are entitled to the buyer's side commission.



# BURDEN OF PROOF

The broker who files the arbitration complaint carries the burden of proof why he or she is the procuring cause and is therefore entitled to receive the commission.

Generally, the broker filing the complaint is the one who does not have the commission, so in most situations the broker who does not have the commission in-pocket will have to prove that he or she is entitled to it.

# PROCURING CAUSE FACTORS



- A compilation of “facts” that are considered by an arbitration panel to determine which broker is entitled to the commission.
- Compiled in a chart and based on factors gathered from many sources that have been used by many arbitration panelists.
- Chart is **NOT** to be used as a numerical system to give points to one side or the other. In given circumstances, some factors will not be present; others should be given more weight. It is a guide to raise and consider relevant issues.

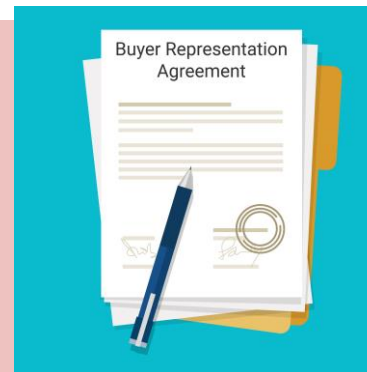
# CATEGORIES OF FACTORS



- **Connection to the Transaction:** the relationship of both brokers to the buyer in the particular transaction.
- **Buyer's Choice:** why the buyer left the original broker, and if the reason was so justified as to defeat the original broker's procuring cause claim.
- **Broker Conduct:** the conduct of the second broker. Could the Closing Broker have prevented the problem? Did the Closing Broker engage in inappropriate conduct that contributed to the "break" in the chain of events started by the Intro Broker?
- **Other:** contractual and other miscellaneous issues that are relevant to the ultimate decision.

# EXAMPLES

- Who first introduced the buyer to the property?
- How much time elapsed between the first broker showing the property and the second broker writing the offer?
- Who ultimately wrote the offer that got accepted and performed services during the escrow?
- Why did buyer choose to leave the first broker?
- Was there a Buyer Representation Agreement in place?



# TIPS TO AVOID A PROCURING CAUSE DISPUTE

**Always ask a prospective buyer whether he or she is working with another broker.**

If yes, ask whether the buyer has signed an exclusive representation agreement.

**If you discover your client has been working with another broker on the same transaction, ask why the client left the first broker and, if appropriate, make immediate contact with the broker and try to resolve the issue.**

Don't risk working through a difficult escrow, closing the transaction and not getting paid.

**Use buyer representation agreements (with or without a compensation provision).** Memorialize the relationship and prompt discovery of other broker relationships. If a buyer's commission is included, it will also create an incentive for the buyer to come to you and terminate the contract prior to going to another broker.





# MORE TIPS TO AVOID A PROCURING CAUSE DISPUTE



- **Accompany clients to open houses.** If you can't, give clients your card and instruct them to tell other agents they are already working with you and present them your card.
- **Stay in close contact with your client and be responsive during the transaction.**
- If you are conducting an open house, **keep a registry of all prospective buyers including a note of whether there was a broker with the buyer.** Keep a record that the agent sitting the open house asked the buyer if they were working with an agent.
- For listings where the property is being shown by brokers when you are not present, **leave a sign-in sheet with buyers' names and brokers' names** similar to those at a new home development. Include dates and times in the registry. This creates a record of who was shown the property and with which broker.

# ADDITIONAL RESOURCES



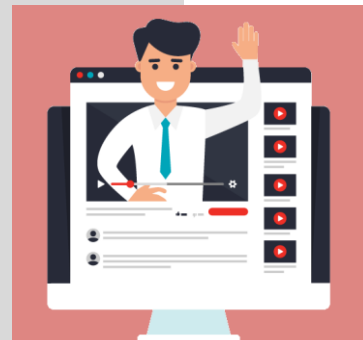
## Procuring Cause Guidelines

<https://www.car.org/en/riskmanagement/qa/commissions-folder/procuring-cause>



## Quick Guide

Procuring Cause Disputes



## Legal Live Webinar

Procuring Cause – Tuesday, October 8th, 2019

<https://www.car.org/riskmanagement/live>