

Broker Compensation Under the RPA

Compensation Agreements Must or Should Be Put in Writing

Compensation agreements between a real estate broker and a principal need to be in writing to be enforceable. Examples of such agreements include a listing agreement (C.A.R. Form RLA), a buyer representation agreement, a one-party or single party compensation agreement (C.A.R. Form SP) or a commission agreement (C.A.R. Form CA).

Compensation agreements between real estate licensees are enforceable even if verbal, if they can be proved, but prudent practice dictates that such agreements be put in writing. The MLS is an agreement between participating brokers. C.A.R. Form CBC, the Cooperating Broker Compensation Instructions, is another example of a written agreement between brokers.

What is the Relevance of the Residential Purchase Agreements (“RPA”) to Broker Compensation?

The RPA itself does not establish compensation but instead is both (a) a promise of the principal to pay and (b) an instruction to escrow to pay, according to a separate written agreement.

The Escrow Holder is Required to Follow Instructions

The RPA is joint escrow instructions (see RPA title and paragraph 19) and makes the brokers a party to the escrow for purposes of compensation (see paragraph 19D). If any of the compensation agreements specified above is delivered to escrow, the escrow holder is contractually obligated to follow them (see paragraph 19D).

Since the broker compensation instructions are irrevocable, subsequent instructions from principals that contradict the commission instructions submitted by the brokers should not be followed by the escrow holder.

MLS Instruction or CBC, which is Best?

If both listing and cooperating brokers are members of the same MLS or reciprocal MLSs, then the MLS compensation instruction is sufficient. The CBC form can be used as a substitute to confirm the amount promised to a cooperating broker through the MLS. If the property is not listed in the MLS, OR the cooperating broker is not a member of the MLS or reciprocal MLS, OR if the listing broker and cooperating broker mutually agreed to amend the compensation promised in the MLS THEN the CBC should be used to document the agreement between the two brokers.