

Legal Questions & Answers

February 2016

Question: An agent who recently transferred to our office had a listing that was active with her former brokerage at the time. As she was transitioning to our office, we received an offer on her listing that was later accepted. Which office is entitled to the listing commission?

Answer: The answer will depend on whether the seller had authorized the transfer from one principal broker to another in writing, and the timing of such authorization. If the seller still has an active listing agreement with the first principal broker, then the seller may be obligated to pay a commission to the first brokerage. In addition, the timing of the transfer and the broker's entitlement to commission will depend on the terms of the broker's independent contractor agreement with the former brokerage. As the former brokerage could potentially claim that it is entitled to the commission, it may be prudent to discuss the matter with the broker's former principal broker.

Question: Are brokers now required to possess a mortgage lender's license in order to write seller financing terms into the sale agreement?

Answer: A broker is not required to have a mortgage loan originator license in order to simply write terms of seller financing into an offer, counteroffer or addendum on behalf of a client. However, the broker cannot assist in negotiating the potential financing terms and should not advise the client regarding what terms may be appropriate. However, a seller may be required to utilize the services of a mortgage loan originator under certain circumstances. We would recommend reviewing the revised OREF residential sale agreement and seller financing related documents for further information.