

Legal Questions and Answers

April 2015

Question: My agent, who represents the seller, has a transaction with another brokerage's agent who is representing her daughter as the buyer. They have asked the seller for repairs in the amount of \$2,000.00. The buyer has a VA loan with 100% financing. The seller has agreed to credit the buyer for repairs by reducing the price of the property. The buyer's agent and her principal broker have asked us to increase the buyer's broker's commission by \$2,000.00 in lieu of the reduced purchase price so that she can pay cash to the buyer after closing. Is this legal?

Answer: The selling broker's payment of cash to the buyer after closing may constitute lender fraud and may also constitute an unlawful sharing of commissions with an unlicensed individual. Accordingly, we would strongly recommend against allowing such an arrangement. The seller may wish to consider paying for the repairs directly or reducing the sale price, as has been suggested.

Question: We have a seller under contract. The buyer is requesting termination prior to closing for reasons other than failure of a contingency, and demands that his earnest money be returned. The seller wishes to complete the termination process while disputing the earnest money disbursement and place the home in active status on the MLS. If we let them terminate, but do not agree to the release of earnest money, how do we accomplish the above? The termination will need to be signed by both parties, but if the parties do not agree on content, how do we proceed?

Answer: It may be prudent for the buyer to simply communicate his or her termination in writing, notwithstanding the dispute over earnest money. The termination does not need to be mutual in order for the seller to proceed ahead with another buyer, although it would be advisable for the seller to acknowledge the buyer's termination in writing. Assuming that the commission is within the \$10,000.00 jurisdiction of small claims court, the earnest money dispute may be resolved in that forum.