



# WASHINGTON REALTORS®

## Legal Hotline Q&A of the Week

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### Question:

We represented the seller. Seller was offering X% to a BB. Buyer brought offer significantly less than asking price. The seller changed the compensation in section 17(b) from X% to 1.5% less than X and initialed/sent back to buyer's agent while accepting the lower price. Buyer's agent had their buyer's initial the change and email back to our listing broker. Seemed clean and understood without any issues or complaint from buyer's broker. Now, buyer's broker's DB is complaining that they are still owed the additional 1.5% compensation even though buyer and seller agreed to lower commission in 17(b). Question, Does buyer's broker's DB have any legal standing to demand the additional 1.5% of compensation when they did not provide complaint during the PSA negotiations and both buyer and seller agreed to reduction in commission?

### Answer:

The fact that listing broker is in an NAR MLS is significant, however, this answer will analyze the question assuming that either version of the listing agreement was used. When a listing broker is a member of an NAR MLS, this means that listing broker likely used a Form 1A SWF for the listing. Form 1A SWF does not include any language for making an offer of compensation to a BB. Thus, if seller offered compensation to a BB, seller did so with language supplied by the listing firm. Whether BB firm has a claim to the amount of compensation seller offered versus the amount that buyer and seller agreed in the PSA depends upon the language used in the seller's offer of compensation. It is unlikely that LB's language included any prohibition on seller negotiating for a lower amount. While that prohibiting language exists in the NWMLS listing agreement, it does not exist in the boiler plate language of Form 1A SWF. Assuming seller's offer of compensation to BB did not include language prohibiting seller from modifying the amount of compensation, then seller and buyer were free to negotiate for reduced compensation. That is what buyer and seller did in paragraph 17(b) of Form 21. When seller countered buyer's offer to reduce the amount of compensation seller would pay BB and buyer accepted seller's counter, the parties had a binding agreement regarding compensation. Based on the facts presented, assuming seller listed using a Form 1A SWF, seller owes BB compensation in the amount identified in paragraph 17(b) and not the amount identified as seller's offer of compensation in paragraph 17(a).





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## Answer Continued...

If the seller listed using the Form IA, the analysis would be slightly different although the same ultimate conclusion would be true, based on the facts presented. Form IA includes language prohibiting seller from modifying or withdrawing the offer of compensation once buyer makes an offer to purchase seller's property and for three days following buyer's notice that buyer intends to write an offer. However, Form IA also says that seller's obligation to pay compensation to BB is based on seller's offer of compensation unless modified based on the terms of a PSA. In this negotiation, if the seller listed using a Form IA, buyer could have objected to seller's counteroffer reducing the BB compensation and forced a negotiation around the purchase price only. However, it appears that buyer did not object and instead chose to negotiate seller's payment of BB compensation. With that, seller's obligation to pay BB compensation is based on the negotiation of the parties rather than seller's original offer. This outcome is consistent with Form IA (lines 64-65).

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