

The following change was approved for the CAR MLS rules. Bay East strives for complete parity between our local rules and C.A.R.'s Model MLS Rules; therefore, the Multiple MLS Management Committee ("M3"), consisting of representatives from Bay East, Contra Costa, and EBRDi, approved the change. The new rule will be effective December 15, 2012. If you have any questions regarding the changes, please contact Roya Chaudhry at 925-730-4071 or royac@bayerest.org. For a full set of the MLS Rules and Regulations, please go to <http://www.bayerest.org/mls/rules>

New MLS Rule on Short Sale Compensation

Current rules allow a listing agent in a short sale to make a "conditional offer of compensation," meaning that the amount offered to the cooperating buyer broker is conditioned on the total commission amount allowed by seller's lender, and therefore can be reduced if the seller's lender reduces the total commission to be paid in the short sale.

Thus, many listing agents have been writing in the confidential remarks something like "Short sale commission subject to lender approval. Any reduction in total commission shall be split ___% - ___% between listing and selling office."

Current Rule to be Removed

7.15.2 Lender Approval Listings. Compensation offered through the MLS to cooperating brokers on listings which require lender approval (commonly referred to as "short sale" listings) is for the amount published therein unless the listing broker indicates on the MLS the following: (a) the fact that the sale and gross commission are subject to lender approval; and (b) the amount or method by which the compensation offered through the MLS will be reduced if the lender reduces the gross commission. This section does not allow an additional reduction from the commission offered for items such as a short sale negotiator fee or other administrative costs of the transaction. Any reductions from the commission offered for such items should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

At the October, 2012 meeting of the CAR Board of Directors, CAR decided to remove the short sale conditional offer of compensation rule, and instead replace it with a mandatory disclosure of short sale status. This change was recommended because of the many abuses reported based on the above rule allowing for a conditional offer of compensation to short sale buyer brokers.

New Revised Rule:

7.15.2 Short Sale (Lender Approval) Listings. Participants must disclose potential short sales (defined as a transaction where title transfers, where the sale price is insufficient to pay the total of all liens and costs of sale and where the seller does not bring sufficient liquid assets to the closing to cure all deficiencies) when reasonably known to the listing broker. This section does not allow Participants with short sale listings to place any reduction conditions on compensation offered through the MLS for items such as lender reductions of the gross commission, short sale negotiator fees or other administrative costs of the transaction. Any reductions from the commission for such items, if any, should be factored in as a reduced amount the listing broker initially offers to a cooperating broker and may not be made a condition of the offer.

What this rule change means is short sale listing agents will no longer be able to change the amount of compensation to a cooperating buyer broker based on the seller's lender's reduction in the total commission allowed.

Short sales will be treated the same as all other regular sales where there is a definite offer of compensation that will not change, and cannot be changed, based on the seller's lender's approval of a total commission in the transaction.

For more information on this change, see the CAR Legal Memo on the subject at:

<http://www.car.org/legal/mls-folder/mls-comm-shortpay-probate/>