

Negotiating Commission in a Contract

- Article by Seth Weissman – GA REALTOR® Magazine
- <https://garealtor.com/wp-content/uploads/License-Law-10-Things-to-Know.pdf>

A selling agent cannot use a purchase and sale agreement to negotiate his or her commission.

Selling agents are free to negotiate their commissions with listing agents. The selling agent can call the listing agent, complain about the commission being too little and demand a higher commission. They can fight and argue about the commission to be paid to the selling agent until they are both blue in the face.

What is prohibited under license law is “inducing any person to alter, modify or change any licensee’s fee or commission for real estate brokerage services without that licensee’s prior written consent”. (O.C.G.A. § 43-40-25(b)(35)).

What this means in plain English is that while licensees are free to negotiate commissions directly with one another, they cannot use other people to negotiate their commissions for them.

So, for example when a buyer submits an offer which includes a stipulation that the selling agent’s commission shall be increased from one percent of the sales price to three percent of the sales price, that is seen by GREC as the selling agent inducing the buyer to modify or change another licensee’s commission. I have heard a few REALTORS® argue that including such a provision in a purchase and sale agreement is not seeking to change the commission being paid, just how it is divided between the listing agent and the selling agent. While such an argument can be made, it is not how the GREC views it. They see any third party effort to modify what the listing agent will ultimately receive as violating license law.

Now is it still a violation if the selling agent negotiates a change in the commission with the listing agent and then confirms that agreement in the purchase and sale agreement? Probably not so long as it is clear from reading the contract that it is not being used as a vehicle for an ongoing negotiation.

So, for example, adding the following special stipulation to the contract to confirm a revised agreement on the commission should be compliant with license law. “This is to confirm that the listing broker and selling broker have previously renegotiated the commission to be paid by the listing broker to the selling broker in an amount equal to ___ percent of the sales price”.

