

Short Sale Requirements, Questions & Answers

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STATUS

(Section revised 1/31/08)

1. **Question:** *My “Short Sale” MLS listing has an offer on it that is being considered for approval by the lender; what status should my listing be in?*

Answer:

- A. When a “Short Sale” listing has an accepted offer (even with a Short Sale Addendum) signed by both the buyer and the seller, and is waiting for approval from the lender, the listing **MUST** be put into **AWC-I** status. (Note: Any subsequent offer would be accepted in a back-up position. This approach will prevent the seller from selling the house more than once. Talk to your broker for more clarification.)
- B. (1) – If there is an offer, signed by both buyer and seller, and forwarded to the lender for approval, **and** if both buyer and seller have signed the AAR Multiple Counter Offer **and** the “AAR Short Sale Addendum” the listing shall remain in **ACTIVE** status. (Note: Upon obtaining lender approval of the short sale and upon **SELLER FINAL ACCEPTANCE** of the AAR Multiple Counter Offer, listing status must be changed to AWC-I, per A, above.

(2) If there is no written acceptance signed by the seller, and the offer (or multiple unsigned offers) is/are awaiting approval by the lender, the listing shall remain in **ACTIVE** status.

LIST PRICE

1. **Question:** *What are the list price requirements for a “Short Sale”?*

Answer: Rule 8.9 of the ARMLS Rules and Regulations states: *Listing Price Specified. The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings unless the property is subject to auction.*

What does this mean? Currently the rule only calls for the listing agent to have the same price that was agreed upon in the listing contract. The price could also have been modified via a price change form.

2. Question: *Isn't the agent being unethical by listing the property for a price below what they or the lender will accept?*

Answer: ARMLS Rule 16.3 states: *Complaints of Unethical Conduct.* *All other complaints of unethical conduct or requests for arbitration shall be referred by ARMLS to the Association from which the Participant receives MLS services for appropriate action in accordance with the professional standards procedures established in the Bylaws for that Association.*

What does this mean? ARMLS does not have jurisdiction over ethics issues, and has no comment on the ethics of this or any other situation. All ethics complaints must be made to your local association.

COMMISSION ISSUES

(The full Commission rule and all the rules may be found in the Subscriber area of www.armls.com.)

1. Common Scenario: I brought a full price cash offer to the listing agent and the offer was refused. They have no intention of selling the home for the price listed.

A. Question: *Am I owed the commission on this property?* (updated 12/21/07)

Answer: You should consult your Broker if you feel you are owed a commission. ARMLS does not have the authority to rule on contractual issues. Also, you could not file for arbitration through your local association as there was no closing on the property.

B. Question: *What if we closed on the property and I feel that I am owed a commission different than what I received?* (updated 12/21/07)

Answer: In such a case, you would have the option to file for arbitration through your local association or AAR as the situation warrants.

2. Question: *The lender requires that I, as the listing agent, reduce the commission depending on certain factors or conditions. How do I list the commission in the MLS listing and stay compliant with the MLS Rules?*

Answer: ARMLS Rule 12.1 states in pertinent part: (Paragraph 1) Cooperative Compensation Specified on Each Listing. *The listing broker shall specify, on each listing filed with the MLS, the compensation offered to other MLS Participants for their services in the sale (or lease) of such listing. **Such offers are unconditional** except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale (or lease).*

Rule 12.1 goes on further to state in paragraphs 2 through 4: *The compensation amount shall be either a percentage of the gross selling price or a definite dollar (non-zero) amount. Compensation amounts that are not based on the gross selling price (i.e. the base price of a newly constructed home) must be shown as a fixed dollar (non-zero) amount. ARMLS shall not accept or publish any listing that does not include an offer of compensation expressed as either a percentage of the gross selling price or as a definite dollar amount, nor shall ARMLS include general invitations by listing brokers to other Participants to discuss terms and conditions of possible cooperative relationships.*

In filing a property with the MLS the Participant makes a blanket unilateral offer of compensation to other MLS Participants, and shall therefore specify on each listing filed with the MLS the compensation being offered by the listing broker to the other MLS Participants. Specifying the compensation on each listing is necessary because the cooperating Participant has a right to know what his compensation shall be prior to commencing his endeavor to sell. The listing broker retains the right to determine the amount of compensation offered to subagents, to buyer agents or to brokers acting in other agency or non-agency capacities, which may be the same or different.

This shall not preclude the listing broker from offering any MLS Participant compensation other than the compensation indicated on his listings as published by ARMLS, provided the listing broker informs the other broker in writing in advance of their producing an offer to purchase and provided that the modification in the specified compensation is not the result of any agreement among all or any other MLS Participants. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount.

What does this mean? All offers of compensation **must not be conditional.** You may not qualify the commission, in the remarks or anywhere else on the listing, to be less than what is in the commission field(s) on the listing. That commission is a percentage based on the **Gross Selling Price** of the property, or is a **flat dollar amount** that is guaranteed to be paid. The commission you enter is the contractual obligation that the listing agent makes with the buyer's agent. **ALL LISTINGS THAT HAVE CONDITIONAL COMMISSION LANGUAGE IN THE LISTING MUST REMOVE IT.**

Commission may be amended through agreement by the listing agent and the buyer's agent, provided that the procedure laid out in paragraph 4 of Rule 12.1 is followed. **However, that paragraph does not give any authority to enter conditions on the commission entered into the commission field(s).** It explicitly states that you can not modify the compensation as an agreement between all the participants or any other participant (than the one participant that has contacted you, the listing agent). That is further clarification that you must not put a different commission in the Remarks (or any other field except the Commission fields s that is deemed as a conditional commission offered to all MLS participants. (Paragraph added 1/14/2008)

AS OF 2/15/2008 Please see the ARMLS policy on Inappropriate Language in listings. It can be found in the FAQ page of the Subscribers' section of www.armls.com. This policy as it pertains to Commission is repeated here. Section A (2) (a) of the **Inappropriate Language in MLS Listings Policy** states:

Commission Information. All commission language or references are hereby banned from inclusion anywhere in the MLS listing except for the Buyer Broker (BB) or Sub-Agent co-broke fields (SA), and except for the bonus information allowed in the Realtor Remarks. (Section added 2/12/2008)

3. Question: *I disagree with this rule. What, if anything is being done to address the special circumstances involved with Short Sale commission structures?*

Answer: The MLS Committee and Board of Directors, made up of your appointed REALTOR® from each of the local associations, have been meeting diligently to discuss whether or not a rule should be added, changed or amended to allow for certain conditions to be allowed in the case of properties for sale that involve Lender or Court approval.

If any change is made to the commission rule, ARMLS subscribers will be notified immediately. Until such time as the rule is changed (though no assumption should be made that the rule will change), all subscribers **MUST** abide by the current commission rules as explained above, and in the actual language of rule 12.1.

Property Features Field Requirement

- 1. Question: *Must short sales have “Lender/Corp Approval Required” selected as a property feature in the listing?***

Answer: All short sales requiring lender or corporate approval of the offer MUST select and use the drop down feature “Lender/Corp Approval Required”, under the “Miscellaneous” subsection of the electronic profile sheet

While that field does not have an “R” (meaning required field) next to it, it is required to use those items in your listing if one or more of them apply. It does not have an “R” because not every listing has one of the conditions available for selection in “Miscellaneous”.

- 2. Question: *Must the MLS listing state “Short Sale” (or other synonymous language) in the Public and/or REALTOR® Remarks of the listing if it indeed is a Short Sale?***

Answer: It is not a current requirement that you designate that the listing is a Short Sale in either of the Remarks fields. You may include the information if you wish.