

Legal Hotline Q & A



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Q If buyer and seller each initiate statutory cancellation of a residential purchase agreement, what happens to the earnest money?

A In the event a buyer and seller have each initiated a statutory cancellation of a residential purchase agreement, pursuant to MN Statute §559.217, the purchase agreement is deemed cancelled as of the service upon the second party. As provided by statute, the parties must then pursue other legal remedies to recover the earnest money. Earnest money remains in trust until the parties have either agreed to release it by written agreement, or until a court has decided who is entitled to the earnest money. If the amount of earnest money is less than \$7500, the matter may be handled in conciliation court (small claims court).

Q If a broker licensed in another state procures a buyer to purchase a property in the state of Minnesota, may that out-of-state broker be paid a commission from the Minnesota broker?

A Yes, generally. MN Statute 82.41 prohibits commission splitting, rebates and fees in various circumstances, but specifically states that it does not apply to “persons from other jurisdictions similarly licensed in that jurisdiction”. In short, if the broker holds a proper broker license in another state, our state law does not prohibit that broker from receiving a commission or fee.

Q Our brokerage has been charging a percentage commission, and an additional flat amount, which we have identified as our “admin fee” or by some other name. Is this okay?

A Yes, if done appropriately. While there are provisions of RESPA as well as certain court cases that have called into question whether a brokerage may charge a fee independent of its commission, seemingly for services distinct from those being performed for the commission. Where those services are either not defined, poorly defined, or are deemed to have no value, the fee charged becomes more suspect. HUD has specifically indicated, as identified in a letter issued by HUD this year, that a brokerage may properly charge a commission that is comprised of a combination of a percentage and a flat fee amount. While there is in fact a way to properly charge a commission that is comprised of both a percentage fee and an additional flat dollar amount, this issue should be carefully considered and reviewed in advance by brokers. Issues to be particularly attentive to include ensuring the flat fee and percentage are all part of the overall commission being charged by the brokerage, that the commission charged is properly agreed to in advance in writing by the consumer, and that such commission is properly documented on the HUD-1 Settlement Statement. More details can be discussed with your broker or attorney.

NOTICE: Real Estate Brokers and Salespersons are invited to submit questions to the Minnesota Association of REALTORS® that they would like answered in the Legal Hotline Column. You can email requests to Erica Forman at eforman@mnrealtor.com or fax them to (952) 935-3815. Please indicate that your question is for the Legal Hotline Column. **Questions submitted will NOT be directly answered.**