

Understanding LIBOR's New Forms



Understanding the NAR Settlement and Necessary Changes to LIBOR's Forms

- On March 15, 2024, NAR announced it reached a proposed settlement with the plaintiffs in nationwide seller class action antitrust litigations.
- Settlement requires 2 major MLS rules changes that MLS's must put into effect by August 17, 2024.
- OneKey® MLS will put the rules in place starting August 8, 2024.

Settlement Terms that Caused Changes to LIBOR's Forms

1. Offers of compensation are prohibited on the MLS.
2. MLS participants working with buyers must enter into written representation agreements with their buyers before touring a home.



Offers of Compensation Prohibited on the MLS

- Offers of compensation could continue to be an option consumers can pursue off-MLS through individual negotiation and consultation with real estate professionals.
- Participants are permitted to promote a seller's agreed upon offer of compensation for their own listing off the MLS.
- Sellers can also offer buyer concessions on an MLS provided they aren't conditioned upon use as buyer broker compensation (for example—concessions for buyer closing costs).

What Must the Buyer Representation Agreements Provide?

1. To the extent the REALTOR® will receive compensation from any source, the amount or rate of compensation the REALTOR® will receive or how this amount will be determined.
2. The amount must be objectively ascertainable and not open ended (e.g. cannot say “buyer broker compensation shall be whatever amount the seller is offering to buyer”).
3. REALTOR® cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

LIBOR'S New Forms

1. Exclusive Right To Sell Agreement (Revised)
2. NAR Settlement Addendum to Exclusive Right to Sell Agreement (New)
3. Confirmation of Seller's Agreement to Pay Buyer's Broker (New)
4. Memorandum of Offer to Purchase/Sell (new)
5. Exclusive Buyer Representation Agreement (Revised)
6. Non-Exclusive Buyer Representation Agreement (New)
7. Addendum to Convert Non-Exclusive Buyer Representation Agreement to Exclusive Buyer Representation Agreement (New)
8. Exclusive Right to Rent Agreement (Revised)

1. Exclusive Right to Sell Agreement: Compensation Section

- Notifies the owner that commissions are negotiable and not set by law.
- Compensation is for listing broker's services and not subject to splitting.
- No section for cooperative compensation.
- Request by Buyers for Buyer's Broker Fees Section.
- Option for additional listing broker compensation to listing broker where buyer is unrepresented.

1. LISTING BROKER FEE.

THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REALTOR® ASSOCIATION OR ONEKEY® MLS AND IS FULLY NEGOTIABLE BETWEEN OWNER AND THE LISTING BROKER.

OWNER INITIAL

Listing Broker Fee (“Broker Fee”): The OWNER hereby agrees to pay the LISTING BROKER a total fee in the amount of _____% of the selling price; \$_____ or Other (please specify) _____
_____. The Broker Fee is exclusively for LISTING BROKER’S services and is not subject to sharing, splitting, or otherwise paying to a buyer's broker or agent.

OWNER INITIAL

**Exclusive Right to Sell Agreement:
Compensation Section**

2.REQUEST BY BUYERS FOR PAYMENT OF BUYER'S BROKER FEES. LISTING BROKER has explained and advised OWNER that OWNER is not required to offer compensation to other brokers or agents representing buyers ("Buyer Brokers") that procure a buyer for the PROPERTY ("Buyer's Broker Fees"). An OWNER may receive requests from a buyer to pay Buyer's Broker Fees as part of the purchase offer or separately. The OWNER can accept, deny or negotiate the amount of Buyer's Broker Fees being requested by the Buyer. LISTING BROKER will disclose in writing to OWNER, and obtain OWNER's authority, for any offer to pay Buyer's Broker Fees made to another Buyer Broker. This disclosure will include the amount or rate of any such offer to a Buyer Broker and will be made in advance of any payment or agreement to pay. Any agreement to pay Buyer Broker's Broker Fees will be memorialized in a Confirmation of Seller's Agreement to Pay Buyer's Broker signed by the parties and/or the binding contract of sale.

OWNER INITIAL

Exclusive Right to Sell Agreement: Compensation Section

3. ADDITIONAL LISTING BROKER FEE FOR UNREPRESENTED BUYER (CHECK IF APPLICABLE).

If LISTING BROKER produces a buyer ready, willing, and able to buy the PROPERTY, and such buyer is not represented by a broker at the time of ratification of the contract of sale, the Broker Fee shall also include the following in addition the Listing Broker Fee specified in paragraph 1: _____% of the selling price; \$_____ or Other (please specify)

_____.

OWNER INITIAL

**Exclusive Right to Sell Agreement:
Compensation Section**

Exclusive Right to Sell Agreement: Seller's Concession Section

- The form includes an area for the seller to indicate if they want the listing broker to advertise that the seller is willing to offer a seller's concession as part of the listing.
- Seller's concessions are permitted on the MLS, but they are not a substitute for offers of compensation and cannot be conditioned upon or limited to being used as buyer broker compensation.

6.SELLER'S CONCESSION. A Seller's Concession is a monetary contribution given by OWNER to a buyer to use towards the buyer's closing costs.

The OWNER ___ does / ___ does not elect to authorize LISTING BROKER to advertise that OWNER is offering a Seller's Concession at closing as a credit toward a buyer's closing costs.

OWNER INITIAL

If the OWNER authorizes LISTING BROKER to advertise that OWNER is offering a Seller's Concession at closing as a credit toward a buyer's closing costs, OWNER also authorizes LISTING BROKER to advertise that OWNER is offering a Seller's Concession in the whole amount of \$_____.

OWNER INITIAL

Exclusive Right to Sell Agreement: Seller's Concession Section

Exclusive Right to Sell Agreement: Dual Agency Section

- This is not a consent to enter into dual agency or dual agency with designated sales agent.
- Just notifies owner that, if consent to dual agency is later provided, listing broker may receive a broker fee from the owner and a broker fee from the buyer for services rendered separately to each.



Exclusive Right to Sell Agreement: Dispute Resolution Section

- Allows the parties to voluntarily mediate any dispute at LIBOR.
- Includes provision for recovery of attorneys' fees by prevailing party.



2. NAR Settlement Addendum to Exclusive Right to Sell Agreement

New form that can be used for MLS listings that are active as of Augst 8, 2024.

Current listing agreement gives the listing broker the exclusive right to make an offer of compensation on the MLS. Also lacks language required by NAR Settlement.

Listing broker needs to enter into a new listing agreement or have the seller execute an addendum removing this term and adding mandated settlement language.

- 1. THE OWNER UNDERSTANDS AND ACKNOWLEDGES THAT LISTING BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REALTOR® ASSOCIATION OR ONEKEY MULTIPLE LISTING SERVICE, LLC (ONEKEY MLS) AND IS FULLY NEGOTIABLE BETWEEN OWNER AND THE LISTING BROKER.**
2. Owner understands and acknowledges that, effective August 8, 2024, Listing Broker may not advertise or make an offer of compensation to other brokers through the OneKey MLS or any other MLS, but Owner agrees Broker may continue to offer the compensation agreed to in paragraph 1 of the Listing Agreement outside the MLS to anyone authorized under law to receive a commission.

NAR Settlement Addendum to Exclusive Right to Sell Agreement

NAR Settlement Addendum to Exclusive Right to Sell Agreement

This form is used when the listing broker and owner do not want to change compensation agreed upon in their existing Exclusive Right to Sell Agreement.

In cases where Listing Broker and Owner want to change compensation agreed upon in their existing Exclusive Right to Sell Agreement, they would use new Exclusive Right to Sell Agreement.

3. Confirmation of Seller's Agreement to Pay Buyer's Broker



- Used to confirm seller's agreement to pay a buyer broker as part of a transaction.
- Confirms agreed upon compensation to be paid upon closing to buyer broker for procuring buyer for the property, and provides that agreement to pay will be included in contract of sale.
- Disclosure of seller paid compensation to Buyer.
- Buyer's Broker acknowledges that the amount being paid to Buyer's Broker does not exceed the amount, if any, Buyer has agreed to pay Buyer's Broker.
- Allows the parties to voluntarily mediate any dispute at LIBOR.

4. Memorandum of Offer to Purchase/Sell



- Completely new form that replaces LIBOR Sales Agreement.
- Non-binding sales memo to be completed by brokers and sent to seller's and buyer's attorneys for the purposes of facilitating the creation of a contract of sale.
- Recites proposed deal terms.
- Includes any seller concessions and/or confirmation of any agreed upon payment at closing by Seller to Buyer Broker, which can then be set forth in the final contract of sale.

5. Exclusive Buyer Representation Agreement

- Sets forth that the buyer's agent represents the buyer exclusively for all purchases made during the term of the agreement.
- Includes mandatory language that Broker Fee is not set by law and is fully negotiable; and broker shall not receive compensation from any source for the services provided to Buyer that exceeds the amount in the Agreement.
- Includes new language where the broker will attempt to collect all or some of the Broker Fee from the Seller.
- Allows parties to voluntarily mediate any dispute at LIBOR. Includes provision for recovery of attorneys' fees by prevailing party.

Exclusive Buyer Representation Agreement

2. BROKER FEE. The amount or rate of broker compensation is not fixed by law. Broker compensation is set by each Broker individually and is fully negotiable between the Buyer and the Broker. Broker shall not receive compensation from any source that exceeds the amount in this Agreement.

b.) **Seller Payment Through Offer.** Upon Buyer's request, Broker can attempt to collect some or all of the Broker Fee from the Seller to be included in the Purchase Offer submitted by Broker on behalf of the Buyer. If Seller refuses or fails to pay Broker the Broker Fee, Buyer will pay Broker the Broker Fee less any amounts Broker receives from the Seller for services Broker provided to Buyer. Any agreement between Seller and Buyer to pay some or all of the Broker Fee will be memorialized in a Confirmation of Seller's Agreement to Pay Buyer's Broker signed by the parties and/or the binding contract of sale.

6. Non-Exclusive Buyer Representation Agreement



- Completely new form.
- Similar to the Exclusive Buyer Broker Agreement, but does not require exclusivity and places less obligation on buyer.
- Length of Agreement has options for limited term or showing of specific properties.
- Broker must be procuring cause to get paid.
- Also has mandatory settlement language, broker fee explanation, language to collect fee from seller and voluntarily mediation option.

7. Addendum to Convert Non-Exclusive Buyer Representation Agreement to Exclusive Buyer Representation Agreement

- Completely new form.
- Allows broker and buyer to transition an existing Non-Exclusive Buyer Representation agreement to an Exclusive Buyer Representation Agreement.



8. Exclusive Right to Rent Agreement

- Updated version of Exclusive Right to Rent Agreement.
- Adds language to comply with NAR settlement.
- Removes form language concerning offers of cooperative compensation.





Your Questions About LIBOR's New Forms

Question: Am I Required to Use LIBOR's New Forms?

Answer: No. Use of LIBOR's forms is not required.



LIBOR has provided these forms as a member benefit to assist members in complying with the NAR Settlement, but they are optional for members to use for that purpose.

Agents should speak to their broker and/or office manager about what form(s) they want them to use to comply with the NAR Settlement; and brokers should speak to their own legal counsel about what forms they recommend using to comply with the NAR Settlement.

Question: Why Do You Recommend Using LIBOR's New Forms?

Answer: Because they have been updated to include mandatory language required by the NAR Settlement Agreement.

They were also created to be easier for a consumer to read and understand, and easier for a broker to explain to a consumer. The forms contain protections for both the consumer and the broker. It's a win-win!

Question: Why Was it Important to Make LIBOR's Forms More Consumer Friendly?



Answer: The Consumer Federation of America (CFA), a non-profit consumer advocacy organization, has taken a close interest in the NAR Settlement and its effects on consumers.

CFA wants to ensure forms used in the real estate industry are consumer-friendly and do not contain legalese, have a larger type set, and that they are fair to both the broker and the consumer. LIBOR believes it has achieved that.

Question: Why Should We Be Concerned with What CFA Thinks?

Answer: The CFA is a powerful consumer advocacy group that communicates with the Department of Justice (DOJ).



Question: Why Did LIBOR Remove Language Concerning Offers of Cooperative Compensation from its Forms?

Answer: Because offers of cooperative compensation are no longer allowed on the MLS, and the DOJ and consumer groups are looking closely at the practice and our industry's forms, LIBOR's Board of Directors felt it was best to remove cooperative compensation from its forms.

LIBOR felt its members and consumers are best served by making their own independent choices when it comes to deciding how to address cooperative compensation.

Question: Does this Mean Offers of Cooperative Compensation Are Illegal?

Answer: The NAR Settlement prohibits offers of compensation from being on or facilitated by the MLS, but NAR has said cooperative compensation continues to be an option consumers can pursue off-MLS through negotiation and consultation with their real estate professionals.

Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve on an individual basis.

Question: Why Do NYSAR's Forms Have Language Concerning Offers of Cooperative Compensation?

Answer: NYSAR's forms committee decided to include cooperative compensation in its listing agreement. LIBOR Board of Directors did not.

You can use whichever form you want. We would suggest brokers consult with their own attorney to help make their decision, and agents should consult with their brokers and/or office managers.

Question: If There Are no Offers of Compensation from a Listing Broker to a Cooperating Broker, How Will the Industry Function and How will Cooperating Brokers Get Paid?

Answer: The listing broker should negotiate their commission with the seller, while the buyer's broker should negotiate their fee with the buyer.

The listing broker will inform the seller that a buyer might request a seller's concession for closing costs or for the seller to pay some or all of the buyer's broker's fee.

Meanwhile, the buyer's broker will advise the buyer to include the broker fee in the purchase offer or discuss if the seller will provide a concession to cover the fee. All of this is negotiable and depends on the parties' preferences.

This is a straightforward and simple way of conducting business.

Question: Is this Going to be a Whole New Way of Doing Things in Real Estate?

Answer: The change is going to be much more in form than in substance.

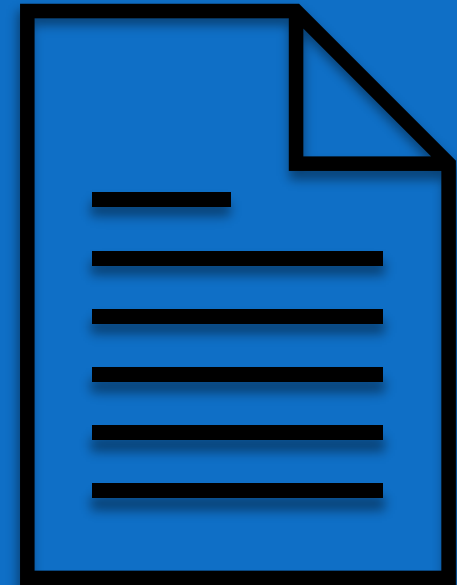
A broker with good skills in communicating, negotiating and understanding how to explain their value proposition, why they are worth the broker fee they are charging, and how to properly value a property is going to be fine in this new environment.



Question: Can Members Make Changes to LIBOR's forms?

Answer: Members are not prohibited from making changes to a form or using only parts of it, but they should consult with their broker and/or their own legal counsel before doing so.

To the extent you make changes to any LIBOR form, you are not permitted to include LIBOR's logo on the form.



Question: Can We Add Our Company's Branding to LIBOR's Forms?

Answer: Yes, you can add your company's branding or logo to the form provided it appears with LIBOR's logo.



Question: Who is Enacting and Enforcing the Rules Required by the NAR Settlement?

Answer: The new rules are enacted and enforced by the local MLS's.

In our case, OneKey® MLS will be responsible for enacting and enforcing the new rules required by the NAR Settlement.



Question: When is OneKey® Enacting the New Rules?

Answer: Effective August 8, 2024.

As of that date, offers of compensation will no longer be permitted on the MLS, and MLS participants working with a buyer must enter into written buyer representation agreement that complies with the NAR Settlement before touring a home with that buyer.

Question: How Do We Handle Listings that Will be Active as of August 8, 2004? Will They Need a New Listing Agreement?

Answer: If you used the OneKey® Exclusive Right to Sell Agreement, which gave the listing broker the right to make offers of compensation on the MLS, the listing broker needs to work with the seller to amend the listing agreement before August 8, 2024 (the date compensation is being removed from the MLS).

Where the Listing Broker and Owner want to maintain the other terms of their existing Exclusive Right to Sell Agreement, they would use LIBOR's new NAR Settlement Addendum to Exclusive Right to Sell Agreement.

Where Listing Broker and Owner want to adopt the new LIBOR Exclusive Right to Sell Agreement, they would need to execute a new Exclusive Right to Sell Agreement.

Question: How Do We Handle Buyer Representation Agreements that are Active as of August 8, 2024?

Answer: Before August 8, 2024, you will need to have the buyer enter into a new buyer representation agreement.

It must have all the necessary terms required by the settlement agreement, including making clear that compensation is not open-ended and is objectively ascertainable; and that the buyer's agent cannot receive compensation from any source that exceeds the amount or rate agreed to with the buyer.



Question: What Should the Focus of a Listing Presentation be When Using LIBOR's New Exclusive Right to Sell Agreement?



Answer: Clearly explain the services you will be providing the seller and the justification for the fee you will be charging.

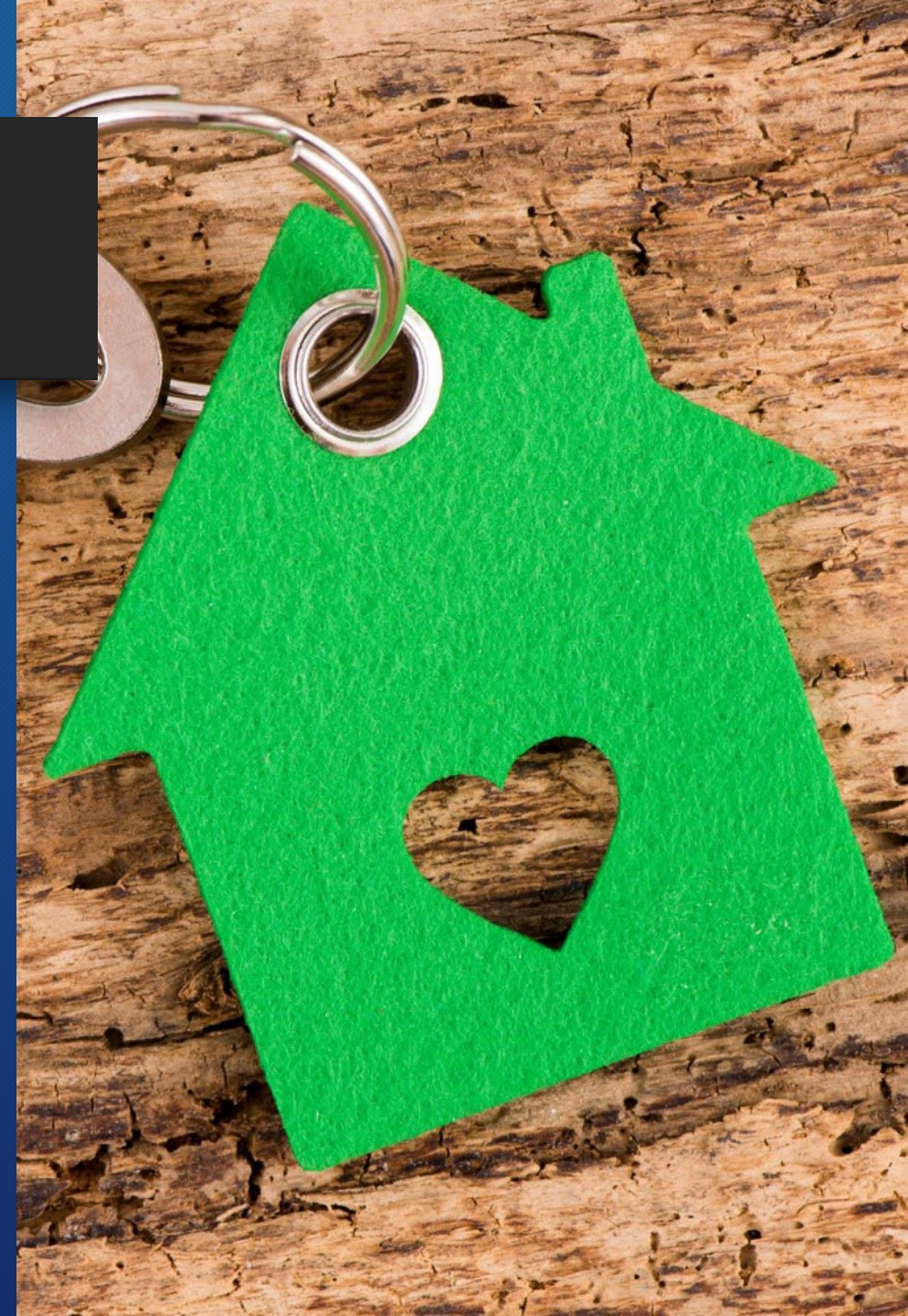
Consider going through paragraph to explain the details of each section. Use the agreement as a checklist.

One paragraph to highlight in the Exclusive Right to Sell Agreement is the one that addresses a buyer asking if the seller would pay a buyer broker fee.

Question: Are Seller Concessions a Replacement for the Compensation Field?

Answer: No. Agents cannot utilize the concession field as a replacement for the compensation field. A seller can advertise that they're willing to offer concessions. They can also elect to advertise a dollar amount they're willing to offer.

It's up to the buyer to decide how to use that money, whether it's for any closing costs like the buyer's own agent, down payment assistance, title fees, or discount loan points.



Question: Under What Circumstances would Section 3 “Additional Listing Broker Fee for Unrepresented Buyer”, Come into Play? Would this be for Dual Agency or Dual Agent with Designated Sales Agent?



Answer: This section of the agreement should be checked if the seller agrees to pay an additional broker fee, separate from the broker fee agreed upon in section 1 for when the listing broker assists a buyer who is not represented by their own broker in purchasing the property.

In this scenario, the listing broker represents the seller, not the buyer. The buyer chose not to have representation. However, the listing broker will perform additional work and tasks to assist the unrepresented buyer in making offers on the property. This additional fee is covering the additional time you will have to incur.

Question: How can I Explain Why a Buyer Representation Agreement is Needed?

Answer: Read them the first line of the Exclusive and Non-Exclusive buyer representation agreement that says, “A written agreement is required before a buyer tours a property with a real estate broker or the broker’s agent.”

Explain that any REALTOR® who is following the Code of Ethics and using OneKey® MLS must have the buyer sign a written agreement before bringing the buyer to tour a home.

Question: What Happens When a Potential Buyer Contacts You to See a Property?



Answer: This will be the most significant change for REALTORS. You will need to get a buyer representation agreement signed. You must demonstrate your value and set your pricing based on your experience.

You will need to explain to your buyer how they can include your fee in an offer so that the seller continues to pay it, as has been done historically.

Question: What Should Buyer's Agents Focus on When Doing Buyer Presentations?

Answer: You should be able to demonstrate your value. Explain what services you provide the buyer and how the fees you charge are consistent with the services you provide and the value you bring to the transaction.



The more you can explain what you do and how it helps the buyer, the more likely the buyer will agree to pay the fee you're seeking.

Question: If a Buyer Does Not Want to Sign a Buyer Representation Agreement, will the Buyer be able to Represent Themselves?

Answer: Yes.

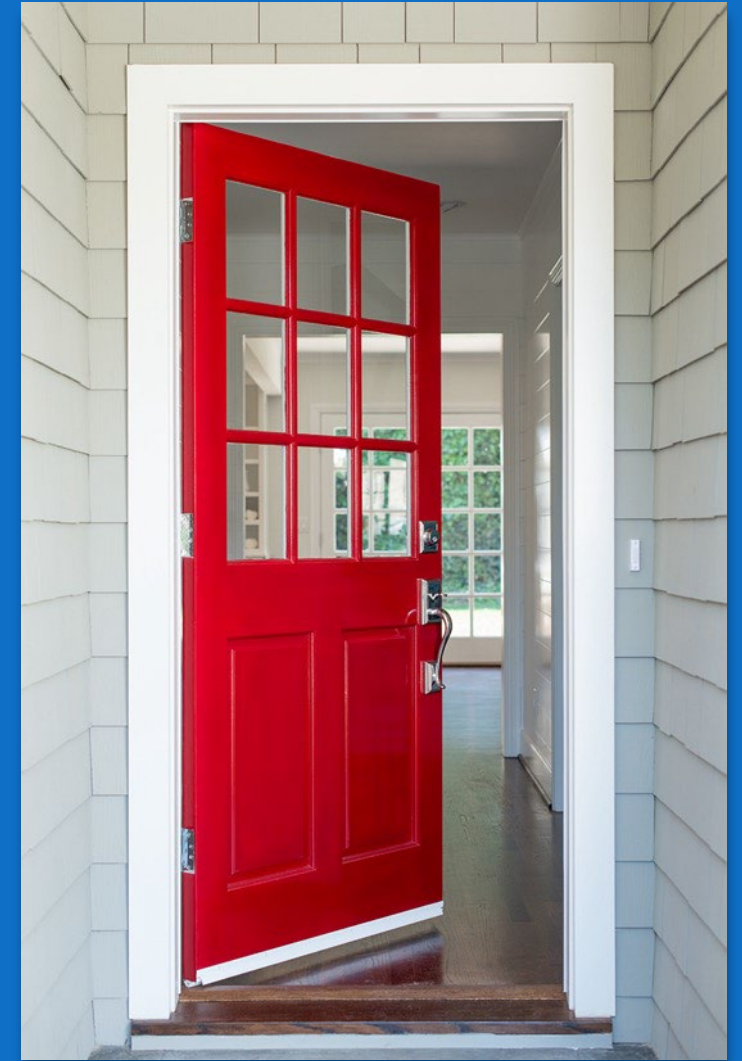
Buyers are the ones who decide whether they want buyer broker representation. Buyers can decide to be unrepresented.



Question: Do I Need to Have a Buyer Who Shows Up at an Open Houses Sign a Buyer Representation Agreement?

Answer: No. As a listing agent at an Open House, you are representing the seller.

You can show a prospective unrepresented buyer your listing without a buyer representation agreement provided you are not also representing the buyer or being compensated for brokerage services by the buyer.



Question: If a Seller is Willing to Offer More Compensation to a Buyer Broker than the Compensation I Agreed to in a Buyer Representation Agreement with my Buyer, can I Accept it?

Answer: No, under the NAR Settlement, a REALTOR® cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

This is stated clearly in both the Exclusive and Non-Exclusive Buyer Representation Agreement.

Question: Why Does the Non-Exclusive Buyer Representation Agreement Not Have All the Same Terms as the Exclusive Buyer Representation Agreement?

Answer: The Non-Exclusive Buyer Representation Agreement is intended to be a less formal relationship where the buyer is entitled to work with multiple buyer's agents at once.

Question: Do I Have to Share my Buyer Representation Agreement with the Listing Broker or Upload my Buyer Representation Agreements to the MLS?

Answer: No.

The same holds true for the listing agreement. The listing broker is not obligated to share it with another broker and it does not need to be uploaded to the MLS.



Question: If a Seller is Not Advertising an Offer of Compensation or Concession Does this Mean that they won't Pay Compensation to a Buyer's Representative?



Answer: No. Compensation is always negotiable.

As a buyer's agent, you should show every single property that fits their criteria, that they're qualified for, and look to make an offer on every single property.

It doesn't matter if the seller has offered concessions or not. Make the offer and then be ready to negotiate the price against the offer you made.

Question: I Do Not Want to Get a Buyer Representation Agreements Signed Before Working with a Buyer so Can't I Just Show Them Homes as a Broker's Agent?

Answer: Before a broker can act as a broker agent or seller agent, the broker must make sure the seller is offering cooperative compensation for those roles.

A broker cannot unilaterally decide to act in this capacity without the consent and approval of the seller and the listing agent.

So, unless you have prior advance approval from the listing broker/seller to work as a broker agent or the seller to act as a seller agent, you cannot tour a home with a buyer without a written buyer representation agreement.

**Question: Do these
New Forms and the
Settlement Really
Change Things?**

Answer: It doesn't change much.

Broker fees have always been negotiable. Instead of having a listing broker offer part of its fee to a buyer broker, the buyer and their broker will first negotiate the fee the buyer is willing to pay. They can then decide whether to request the seller to pay part or all of that fee, or to include the broker fee in the offer.

Question: Is the Memorandum of Offer to Purchase/Sell Replacing the Sales Agreement Form? If so, Will the Sales Agreement be Discontinued?

Answer: Yes. It is intended to be a form to document proposed terms of sale that can then be transmitted to the parties' attorneys to draft a binding contract of sale.



Question: Who does the Exclusive Right to Rent Say Will Pay Compensation to the Listing Agent of a Rental?

Answer: The Exclusive Right to Rent says “The LANDLORD hereby agrees to pay the LISTING BROKER a Broker Fee of ____.”

This is the same language that had been in the prior version of the Exclusive Right to Rent.



Question: Does this Mean the Landlord Cannot Ask the Tenant to Pay the Fee the Landlord Agreed to Pay the Listing Broker?



Answer: As of now, there is no law restricting the landlord from asking the tenant to pay the fee it has agreed to pay the Listing Broker.

But this may change in the near future.

Question: Is There Any Language in the Exclusive Right to Rent Agreement Where the Landlord is Agreeing to Pay Compensation to Renting Agent?

Answer: No, the new form does not have language for offers of cooperative compensation; and offers of cooperative compensation will not be permitted on the MLS for sales or rentals.

The form only provides for what fee the landlord has agreed to pay the listing broker for their services.

Thank You

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