

NAR Legislative Meeting 2024 NOTES

MLS Forum

What triggers the requirement?

1. “Working with a buyer”
2. “Touring a Home”

Working with a buyer:

MLS Participants who provide brokerage services to a buyer

- Identifying potential properties
- Arranging for the buyer to tour a property
- Negotiating on behalf of the buyer
- Writing and presenting offers

As opposed to MLS Participants who simply market their services or just talk to a buyer – like an open house or providing an unrepresented buyer access to one of their listed homes.

Touring a home:

- When the buyer and/or the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a live, virtual tour to a buyer not physically present.

Buyer Representation Agreements – Required Terms

1. State conspicuously specific amount or rate of compensation the buyer broker will receive or how this amount will be determined
 - a. Must be objectively ascertained and not open-ended
2. State conspicuously that commissions are fully negotiable and not fixed by state law
3. State conspicuously that the buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer

Conspicuously – presented in a way that is noticeable to a reasonable person.

- Larger type than surrounding text
- Contrasting type like **bold** or ALL CAPS or **ALL CAPS BOLD**
- Different color than surrounding text
- ****Set off**** from surrounding text

Any type of agreement can be used*

- Exclusive buyer representation agreement
- Non-exclusive buyer rep agreement

- Non-agency
- Transactional
- Limited service
- Designated agency
- Dual agency
- One property, one weekend

**Anything that complies with state law.*

NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer)
- The term of the agreement (e.g., one day, one month, one house, one zip code)
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers)
- The compensation charges (e.g., \$0, X flat fee, X percent, X hourly rate)

Who is enforcing all of this?

THE MLS

How can brokers prepare?

- Reach out to local and state REALTOR associations
- Have a written agreement ready to go by August 17. All new buyer clients/customers will need to sign one before touring a home.
- Existing buyer rep agreements in effect before August 17 do not need to be amended; a separate disclosure can satisfy the requirement

Legal Update

Buyer Agreement Stipulations

Written buyer agreements must:

- State the specific amount or rate of compensation the buyer broker will receive or how this amount will be determined
- Determine that the compensation cannot be open-ended but instead, an amount that can be objectively ascertained. For example, language such as “buyer broker compensation shall be whatever amount the seller is offering to the buyer” is not going to fly.
- State that commissions are fully negotiable and not fixed by state law
- That the buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer

Best practices for buyer agreements:

- Protect and promote the interests of their clients and treat all parties in a transaction honestly, as all REALTORS are required to do
- Continue to use your skill, care, and diligence to protect the interest of your clients
- For our part, NAR remains dedicated to promoting transparency in the marketplace and working to ensure that consumers have access to comprehensive, equitable, transparent, and reliable property information, as well as the ability to have affordable professional representation in the real estate transactions

How offers of compensation are changing:

While the use of the MLS to communicate these offers is no longer an option, the type of compensation available for buyer brokers could continue to take multiple forms. Although not an exhaustive list, these include:

- Fixed-fee commission paid directly by consumers
- Concessions from the seller
- Portion of the listing broker’s compensation

Ethical Practice

- The settlement does not change the ethical duties that NAR members owe their clients
- Protecting the interests of our clients and behaving with honesty remain cornerstones to our Code of Ethics
- These are steadfast responsibilities for all REALTORS