



Let's Talk Listing Agreements

Juana Watkins
General Counsel
Florida Realtors®

Antitrust

Florida REALTORS® is devoted to improving the competitive business conditions of the real estate industry. This meeting may include real estate professionals and other industry stakeholders who compete with each other or work for competing businesses.

Florida REALTORS® is committed to conducting all meetings and events in a professional, ethical, and lawful manner, including in adherence to all antitrust laws. To that end, the topics for this meeting will focus on advancing the interests of real estate professionals and consumers of real estate services, increasing competition, reducing risk for all parties involved in real estate transactions, and sharing insights on business best practices.

The following discussion topics are always prohibited: agreements to fix prices, limit product or service offerings, allocate geographical territory or customers, and refuse to deal. Any discussion inconsistent with this policy will not be tolerated.





Settlement Requirements Listing Agreements

51. What additional provisions must be included in written listing agreements because of the practice changes?



- MLS Participants working with sellers must disclose in conspicuous language that broker commissions are not set by law and are fully negotiable.
- MLS Participants must include the disclosure in the listing agreement, if the listing agreement is not a government-specified form. If the listing agreement is a government-specified form, a separate disclosure would satisfy the requirement. *(Added 5/29/2024)*

Seller approval of offer of comp?



- 52. Must a REALTOR® or MLS Participant acting for a seller obtain prior approval from the seller before an offer of compensation is made or compensation is paid to another broker, agent, or other representative acting for a buyer?
- Yes. The practice changes require that a REALTOR® or MLS Participant **acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment** that a listing broker will make to another broker, agent, or other representative acting for buyers.
- The disclosure must be made to the seller in writing in advance of any payment or agreement to pay another broker, agent, or other representative acting for buyers and must specify the amount or rate of such payment. (Added 5/29/2024)

What should listing brokers advise their clients about the prohibition of offers of compensation on an MLS?



- Listing brokers should inform their clients that offers of compensation will no longer be an option on an MLS.
- This change will not prevent offers of cooperative compensation off-MLS. And it will not prevent sellers from offering buyer concessions on an MLS (ex. concessions for buyer closing costs).
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

Does the settlement agreement's requirement of "objectively ascertainable" and "not open-ended" apply to listing agreements or the compensation sellers pay listing brokers?



- Not exactly.
- Unlike the settlement agreement's requirements that compensation in buyer agreements be objectively ascertainable and not open-ended, listing agreements can be structured however the seller and listing broker agree
- So long as the listing agreement:
 - *complies with the law*
 - *pre-existing MLS policy, and*
 - *"specifies the amount or rate of any payment"* from the seller to the listing broker

TOOLS
New/Revised
Forms
Available on
FormSimplicity



FLORIDA REALTORS® 2024
HOMEGROWN
Professionalism / Advocacy / Inclusion

TOOLS – Revised Listing Agreement Forms



- **Exclusive Right of Sale Listing Agreement Transaction Broker (ERS-20tb)**
- **Exclusive Right of Sale Listing Agreement Consent to Transition to Transaction Broker (ERS-20tn)**
- **Exclusive Right of Sale Listing Agreement No Brokerage (ERS-17nr)**
- **Exclusive Right Of Sale Listing Agreement Single Agent (ERS-19sa)**
- **Exclusive Brokerage Listing Agreement (EBLA-12)**

TOOLS – Revised Listing Agreement Forms-cont.



- **Exclusive Right of Sale Listing Agreement Transaction Broker (ERS-20tb)**
 - This is a listing agreement in which the seller grants the listing broker the right to list the property and establishes that the broker has a transaction broker agency relationship with the seller.
- **Exclusive Right of Sale Listing Agreement Consent to Transition to Transaction Broker (ERS-20tn)**
 - This is a listing agreement in which the seller grants the listing broker the right to list the property, establishes the broker is acting as a single agent for the seller, and includes the consent to transition to a transaction brokerage agency relationship.

TOOLS – Revised Listing Agreement Forms-cont.



- **Exclusive Right of Sale Listing Agreement No Brokerage (ERS-17nr)**
 - This is a listing agreement in which the seller grants the listing broker the right to list the property and establishes the broker has a no-brokerage relationship with the seller.
- **Exclusive Right Of Sale Listing Agreement Single Agent (ERS-19sa)**
 - This is a listing agreement in which the seller grants the listing broker the right to list the property and establishes the broker is acting as a single agent for the seller.
- **Exclusive Brokerage Listing Agreement (EBLA-12)**
 - This is a listing agreement in which the seller grants the listing broker the right to list the property, *but reserves to the seller the right to sell the property themselves without owing compensation to the broker.*

Exclusive Right to Sale Listing Agreement




Exclusive Right of Sale Listing Agreement



This Exclusive Right of Sale Listing Agreement ("Agreement") is between

_____ ("**Seller**")

and brokerage _____ ("**Broker**").

- 
- 1. Authority to Sell Property:** **Seller** gives **Broker** the EXCLUSIVE RIGHT TO SELL the real and personal property (collectively "Property") described below, at the price and terms described below, beginning _____ and terminating at 11:59 p.m. on _____ ("Termination Date"). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. **Seller** and **Broker** acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. **Seller** certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

Exclusive Right to Sale Listing Agreement



2. Description of Property:

(a) **Street Address:** _____

Legal Description: _____
_____ See Attachment _____

(b) **Personal Property, including appliances:** _____
_____ See Attachment _____

(c) **Occupancy:**
Property is is not currently occupied by a tenant. If occupied, the lease term expires _____.

Exclusive Right to Sale Listing Agreement



3. **Price and Terms:** The property is offered for sale on the following terms or on other terms acceptable to **Seller**:
- (a) **Price:** \$ _____
- (b) **Financing Terms:** Cash Conventional VA FHA Other (specify) _____
- Seller Financing:** **Seller** will hold a purchase money mortgage in the amount of \$ _____ with the following terms: _____
- Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ _____ plus an assumption fee of \$ _____. The mortgage is for a term of _____ years beginning in _____, at an interest rate of _____% fixed variable (describe) _____.
- Lender approval of assumption is required is not required unknown. **Notice to Seller:** (1) You may remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your liability. **Seller** will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing. (2) Extensive regulations affect **Seller** financed transactions. It is beyond the scope of a real estate licensee's authority to determine whether the terms of your **Seller** financing agreement comply with all applicable laws or whether you must be registered and/or licensed as a loan originator before offering **Seller** financing. You are advised to consult with a legal or mortgage professional to make this determination.
- (c) **Seller Expenses:** **Seller** will pay mortgage discount, other closing costs, or concessions not to exceed \$ _____ and any other expenses **Seller** agrees to pay in connection with a transaction.

Exclusive Right to Sale Listing Agreement



4. **Broker Obligations:** **Broker** agrees to make diligent and continued efforts to sell the Property in accordance with this Agreement until a sales contract is pending on the Property. This includes, except when not in **Seller's** best interests, cooperating and communicating with other brokers and making the property available for showings. ←
- 5. **Multiple Listing Service:** Placing the Property in a multiple listing service (the “MLS”) is beneficial to **Seller** because the Property will be exposed to a large number of potential buyers. As a MLS participant, **Broker** is obligated to enter the Property into the MLS within one (1) business day of marketing the Property to the public (see Paragraph 6(a)) or as necessary to comply with local MLS rule(s). This listing will be published accordingly in the MLS unless **Seller** directs **Broker** otherwise in writing. (See paragraph 6(b)(i)). **Seller** authorizes **Broker** to report to the MLS this listing information and price, terms, and financing information on any resulting sale for use by authorized Board / Association members and MLS participants and subscribers unless **Seller** directs **Broker** otherwise in writing.

Exclusive Right to Sale Listing Agreement



6. **Broker Authority:** **Seller** authorizes **Broker** to:

(a) Market the Property to the Public (unless limited in Paragraph 6(b)(i) below):

(i) Public marketing includes, but is not limited to, flyers, yard signs, digital marketing on public facing websites, brokerage website displays (i.e. IDX or VOW), email blasts, multi-brokerage listing sharing networks and applications available to the general public.

(ii) **Public marketing also includes marketing the Property to real estate agents outside Broker's office.**

(iii) Place appropriate transaction signs on the Property, except if Paragraph 6(b)(i) is checked below.

(iv) Use **Seller's** name in connection with marketing or advertising the Property.

Display the Property on the Internet except the street address.

(b) Not Publicly Market to the Public/Seller Opt-Out:

(i) **Seller** does not authorize Broker to display the Property on the MLS.

(ii) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), a For Sale sign will not be placed upon the Property and

(iii) **Seller** understands and acknowledges that if **Seller** checks option 6(b)(i), **Broker** will be limited to marketing the Property only to agents within **Broker's** office.

_____ / _____ **Initials of Seller**

(c) Obtain information relating to the present mortgage(s) on the Property.

(d) Provide objective comparative market analysis information to potential buyers.

Exclusive Right to Sale Listing Agreement



- (e) **(Check if applicable)** Use a lock box system to show and access the Property. A lock box does not ensure the Property's security. **Seller** is advised to secure or remove valuables. **Seller** agrees that the lock box is for **Seller's** benefit and releases **Broker**, persons working through **Broker**, and **Broker's** local Realtor Board / Association from all liability and responsibility in connection with any damage or loss that occurs.
- Withhold verbal offers. Withhold all offers once **Seller** accepts a sales contract for the Property.
- (f) Act as a transaction broker.
- (g) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments and reviews about this Property.
- Seller** does not authorize an automated estimate of the market value of the listing (or a hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this Property.
- Seller** does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

Exclusive Right to Sale Listing Agreement



7. **Seller Obligations:** In consideration of **Broker's** obligations, **Seller** agrees to:
- (a) Cooperate with **Broker** in carrying out the purpose of this Agreement, including referring immediately to **Broker** all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.
 - (b) Recognize **Broker** may be subject to additional MLS obligations and potential penalties for failure to comply with them.
 - (c) Provide **Broker** with keys to the Property and make the Property available for **Broker** to show during reasonable times.
 - (d) Inform **Broker** before leasing, mortgaging, or otherwise encumbering the Property.
 - (e) Indemnify **Broker** and hold **Broker** harmless from losses, damages, costs, and expenses of any nature, including attorney's fees, and from liability to any person, that **Broker** incurs because of (1) **Seller's** negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the existence of undisclosed material facts about the Property. This clause will survive **Broker's** performance and the transfer of title.
 - (f) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).
 - (g) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. **Seller** certifies and represents that **Seller** knows of no such material facts (local government building code violations, unobservable defects, etc.) other than the following:
- Seller** will immediately inform **Broker** of any material facts that arise after signing this Agreement.
- (h) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements, and other specialized advice.

Exclusive Right to Sale Listing Agreement



8. **Compensation:** **Seller** will compensate **Broker** as specified below if a buyer is procured who is ready, willing, and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to **Seller**. **Seller** will pay **Broker** as follows:

- (a) _____ % of the total purchase price plus \$ _____ OR \$ _____, no later than the date of closing specified in the sales contract. However, closing is not a prerequisite for **Broker's** fee being earned.
- (b) _____ (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised, **Seller** will pay **Broker** the Paragraph 8(a) fee, less the amount **Broker** received under this subparagraph.
- (c) _____ (\$ or %) of gross lease value as a leasing fee, on the date **Seller** enters into a lease or agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive right to lease the Property.

Exclusive Right to Sale Listing Agreement



- (d) **Broker's** fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether the buyer is secured by **Seller, Broker**, or any other person. (2) If **Seller** refuses or fails to sign an offer at the price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to cancel an executed sales contract. (3) If, within _____ days after Termination Date ("Protection Period"), **Seller** transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom **Seller, Broker**, or any real estate licensee communicated regarding the Property before Termination Date. However, no fee will be due **Broker** if the Property is relisted after Termination Date and sold through another broker.
- (e) **Retained Deposits:** As consideration for **Broker's** services, **Broker** is entitled to receive _____% of all deposits that **Seller** retains as liquidated damages for a buyer's default in a transaction, not to exceed the Paragraph 8(a) fee.
- (f) **Brokerage commissions are not set by law and are fully negotiable.**

Exclusive Right to Sale Listing Agreement

All Potential Sources



9. **Notice to Seller Regarding Buyer Brokers:** The buyer's broker, even if compensated by **Seller** or **Broker**, will provide services for the buyer. **Seller** is advised and is aware that **Seller** may, but is not required to, compensate a buyer's broker upon closing. **Seller** may choose to enter into a separate written agreement to pay buyer's broker or may approve **Broker** to pay buyer's broker in accordance with paragraph 10. **Seller** also understands
- (a) "Buyer's broker" may include this **Broker** if **Broker** also works with buyer on this transaction;
 - (b) If this occurs during the duration of this listing, **Broker** will be entitled to the compensation in paragraph 8 for services performed for **Seller**, as well as the buyer's broker compensation in paragraph 10(a) for services performed for buyer; the **Seller** should therefore take this into consideration when negotiating compensation; and
 - (c) **Broker** may receive separate compensation from buyer for services rendered to buyer by **Broker**.

Exclusive Right to Sale Listing Agreement



10. Compensation to Buyer Brokers: Brokerage commissions are not set by law and are fully negotiable.

Seller approves the following (check all that apply; if no option is checked then option (c) is deemed to be selected):

- (a) **Seller** authorizes **Broker** to offer compensation to buyer's broker in the amount of: _____ % of the purchase price or \$ _____. (This amount will be paid from **Broker** to buyer's broker from the compensation amount agreed to in paragraph 8.) This compensation will be set forth in a separate written agreement between **Broker** and buyer's broker.
- (b) **Seller** authorizes **Broker** to offer compensation to buyer's broker from **Seller** in the amount of: _____ % of the purchase price or \$ _____. This compensation will be set forth in a separate written agreement between **Seller** and buyer's broker.
- (c) No compensation will be offered to buyer's broker.

Exclusive Right to Sale Listing Agreement



- 10(a)
- Seller **authorizes** Broker to offer compensation (Remember NAR FAQ#52)
- to buyer's broker
- in the amount of: _____% of the purchase price or \$_____.
- (This amount will be paid from Broker to buyer's broker from the compensation amount agreed to in paragraph 8.)
- Paragraph 8 “**Seller will compensate Broker as specified below...**” There will be a sharing of the fruit in the basket defined in Paragraph 8.
- This compensation will be set forth in a **separate written agreement** between Broker and buyer's broker.

Compensation Agreement – Seller's Broker to Buyer's Broker



1. PARTIES

Seller's Broker: _____ ("Seller's Broker")

Buyer's Broker: _____ ("Buyer's Broker")

TOOLS – Compensation Forms ...

2. PROPERTY

Property Address: _____

(insert address)

_____ ("Property").



3. BUYER'S NAME (OPTIONAL - COMPLETE IF APPLICABLE)

T13

_____, including any affiliates, successors, or assigns ("Buyer").

4. TERM

This Compensation Agreement takes effect when a fully executed copy has been delivered to all parties to this Agreement and will remain in effect for _____ (if left blank, then 30) days ("Term"). In no event shall the Term extend past the termination date of Seller's Broker's current listing of the Property, including any extensions or effective protection periods; except that, upon full execution of a contract for sale and purchase by a buyer of the Property procured by the Buyer's Broker ("Purchase Agreement"), the Term will automatically extend through the date of the actual closing of the Purchase Agreement.



5. BUYER'S BROKER COMPENSATION

Seller's Broker will compensate Buyer's Broker as stated below at closing of Property if Buyer identified above in paragraph 3 closes on Property and Buyer's Broker is the procuring cause of the sale of Property during the Term. If no buyer is identified in paragraph 3, Buyer's Broker will be compensated at closing of Property if Buyer's Broker is procuring cause of the sale of Property during the Term.

Seller's Broker agrees to compensate Buyer's Broker (CHECK ONE):

- \$ _____ (flat fee)
- _____ % of the gross purchase price of the Property plus \$ _____
- other (specify): _____

Other terms: _____

Seller's Broker (_____) and Buyer's Broker (_____) acknowledge receipt of a copy of this page, which is Page 1 of 2.
The Parties acknowledge this form should not be used to share offers of compensation to buyer brokers or other buyer representatives via any field in the Multiple Listing Service.

Exclusive Right to Sale Listing Agreement



- 10(b)
- Seller **authorizes** **B**roker to offer compensation (remember NAR FAQ #52)
- to buyer's broker from Seller
- in the amount of: _____% of the purchase price or \$ _____.
- This compensation will be set forth in a **separate written agreement** between Seller and buyer's broker.



Compensation Agreement - Seller to Buyer's Broker



1. PARTIES

This Seller to Buyer's Broker Compensation Agreement is between:

Buyer's Broker: _____ ("Buyer's Broker")

and

Seller: _____ ("Seller")



2. PROPERTY

Property Address: _____

(insert address)

_____ ("Property") listed by

_____ ("Seller's Broker").



3. TERM

This Compensation Agreement takes effect when a fully executed copy has been delivered to all parties to this Agreement and will remain in effect for _____ (if left blank, then 30) days ("Term"). In no event shall the Term extend past the termination date of Seller's Broker's current listing of the Property, including any extensions or effective protection periods; except that, upon full execution of a contract for sale and purchase by a buyer of the Property procured by the Buyer's Broker ("Purchase Agreement"), the Term will automatically extend through the date of the actual closing of the Purchase Agreement.



4. BUYER'S BROKER COMPENSATION

If Buyer's Broker is the procuring cause of the sale of Property during the Term, Seller will compensate Buyer's Broker as stated below at closing of Property.

Seller agrees to compensate Buyer's Broker (CHECK ONE):

- \$ _____ (flat fee)
- _____ % of the gross purchase price of the Property plus \$ _____.
- other (specify): _____

Other terms: _____

Seller (_____) (_____) and Buyer's Broker (_____) acknowledge receipt of a copy of this page, which is Page 1 of 2.
The Parties acknowledge this form should not be used to share offers of compensation to buyer brokers or other buyer representatives via any field in the Multiple Listing Service.

Exclusive Right to Sale Listing Agreement



- 10(c)
- No compensation will be offered to buyer's broker.
- Explain to seller that buyers may submit offers with requests for compensation.
- Concessions may be an option for those buyers but can't be conditioned on use for broker compensation.

Exclusive Right to Sale Listing Agreement



- 11. Brokerage Relationship:** **Broker** will act as a transaction broker. **Broker** will deal honestly and fairly; will account for all funds; will use skill, care, and diligence in the transaction; will disclose all known facts that materially affect the value of the residential property which are not readily observable to the buyer; will present all offers and counteroffers in a timely manner unless directed otherwise in writing; and will have limited confidentiality with **Seller** unless waived in writing.
- 12. Conditional Termination:** At **Seller's** request, **Broker** may agree to conditionally terminate this Agreement. If **Broker** agrees to conditional termination, **Seller** must sign a withdrawal agreement, reimburse **Broker** for all direct expenses incurred in marketing the Property, and pay a cancellation fee of \$ _____ plus applicable sales tax. **Broker** may void the conditional termination, and **Seller** will pay the fee stated in Paragraph 8(a) less the cancellation fee if **Seller** transfers or contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination to Termination Date and Protection Period, if applicable.

Exclusive Right to Sale Listing Agreement



- 13. Dispute Resolution:** This Agreement will be construed under Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Arbitration Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:
- Arbitration:** By initialing in the space provided, **Seller** (____) (____), and **Broker or Authorized Associate** (____) agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the arbitrator's fees and administrative fees of arbitration.

Exclusive Right to Sale Listing Agreement



14. Miscellaneous: This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives, administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals. The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories of potential or actual transferees.

15. Additional Terms: _____

Exclusive Right to Sale Listing Agreement



Seller's Signature: _____ **Date:** _____

Home Telephone: _____ Work Telephone: _____ Facsimile: _____

Address: _____

Email Address: _____

Broker or Authorized Sales Associate: _____ **Date:** _____

Brokerage Firm Name: _____ Telephone: _____

Address: _____

Copy returned to **Seller** on _____ by email facsimile mail personal delivery.

Exclusive Right to Sale Listing Agreement



→ Seller (____) (____) and Broker/Authorized Associate (____) (____) acknowledge receipt of a copy of this page, which is Page 4 of 5.
The Parties acknowledge this form should not be used to share offers of compensation to buyer brokers or other buyer representatives via any field in the Multiple Listing Service.



Your Questions Pending Listings

Amend Current Listing Agreements?



52. *Should active listing or buyer agreements—meaning there is **no accepted offer**—entered into before the practice changes go into effect on August 17, 2024, be **amended** to include a **conspicuous disclosure that compensation is not set by law and is fully negotiable?***

- MLS Participants must make this **disclosure**. NOT AMENDMENT.
- Active agreements can either be **amended or a separate disclosure** can be provided to satisfy the requirement.
- A new form will soon be released to make the DISCLOSURE.

How does the broker disclose?
Stay tuned for a Florida form.



COMPENSATION DISCLOSURES

Note to brokers and agents about disclosure requirement pursuant to the NAR settlement and related practice changes:

*For listing and buyer agreements **signed before August 17** that do not already include this **disclosure**, the below is a sample compensation disclosure statement that can be used to address the disclosure requirement.*

*(For agreements entered in August 17 or later, MLS participants are required to provide a conspicuous disclosure that compensation is fully negotiable and not set by law **in all listing and written buyer agreements**. If the listing agreement is a government-specified form, a separate disclosure like the below is sufficient.)*

Go to facts.realtor for more information about the proposed settlement agreement and the required practice changes.

Amend Current Listing Agreements?



54. *Should active listing agreements entered into before the MLS policy changes go into effect on August 17, 2024, be amended to address the settlement agreement's prohibition on offers of compensation being communicated on an MLS?*

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to an MLS, no change to the listing agreement is needed, as the listing broker can comply with that instruction without violating the MLS policy change.
- But if the listing agreement specifies that offers of compensation be made on an MLS then the listing broker should work with the seller to amend the listing agreement before the MLS policy change is implemented, to make it clear the listing broker will not make an offer of compensation on an MLS and to determine whether the seller instructs the listing broker to make an offer of compensation outside of an MLS. *(Added 5/29/2024)*

Amend Current Listing Agreements?



53. Should *active listing agreements* entered into before the practice changes go into effect on August 17, 2024 be amended to address the settlement agreement's *prohibition on offers of compensation being communicated on an MLS?*

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to an MLS, no change to the listing agreement is needed, as the listing broker can comply with that instruction without violating the MLS policy change.
- But if the listing agreement ***specifies that offers of compensation be made on an MLS*** then the listing broker should work with the seller ***to amend the listing agreement*** before the MLS policy change is implemented, to make it clear the listing ***broker will not make an offer of compensation on an MLS*** and to ***determine whether the seller instructs the listing broker to make an offer of compensation outside of an MLS.***

Amend Current Listing Agreements?



- CHECK YOUR DATES – Applicable for the Florida Realtors® Exclusive Right to Sale Listing Agreement ONLY.
- As of July 2024
 - LANGUAGE COMPLETELY REMOVED – NO AMENDMENT REQUIRED
- From March 2024 - July 2024
 - “None of the above. (If this box is checked, refer to local MLS rules regarding entry of the Property).” NO AMENDMENT REQUIRED TO STANDARD
- Prior to March 2024
 - “None of the above. (If this is checked, the Property cannot be placed in the MLS.)” – AMENDMENT REQUIRED



Your Questions

Are written buyer agreements required when listing agents talk with an unrepresented buyer on behalf of a seller?



- No.
- An agreement is not required because the participant is performing work for the seller and not the buyer.

If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?



- No.
- Remember the definition of “WORKING WITH”.
- The “working with” language is intended to distinguish MLS Participants who **provide brokerage services** to a buyer **VERSUS** MLS Participants who **simply market their services or just talk to a buyer**.
- Provide brokerage services to a buyer—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer
- Simply market their services or just talk to a buyer—like at an open house or by **providing an unrepresented buyer access to a house they have listed**.
- In this case, since the MLS Participant is only working for the seller, and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.

If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?



- What about agency law under Chapter 475?
- Section 475.278(5)(b)(2), F.S. says ***The real estate licensee disclosure requirements of this section do not apply to: a bona fide “open house” or model home showing that does not involve eliciting confidential information, the execution of a contractual offer or an agreement for representation, or negotiations concerning price, terms, or conditions of a potential sale***
- Use your judgment on when you might start to reach a discussion on confidential information , price, terms or a potential sale.
- As a listing broker if you do not intend to provide services to the buyer consider giving a no-brokerage relationship form to solidify that intent.
- WHO ARE YOU??? WHO ARE YOU WORKING WITH???

What if the UNREPRESENTED buyer decides to purchase one of my listings?



- CAREFUL HERE!
- Remember “working with”.
- Investor vs. first-time buyer
- Don’t force it, make sure all parties clear
- Make sure the work with WORK (i.e tour, write contract, other services) clearly being done for the seller.

What if the buyer decides to purchase one of my listings and WORK WITH me?



- Are you “working with” buyer? Agency disclosure/relationship?
- Listing agreement advises - “Buyer's broker” may include this Broker if Broker also works with buyer on this transaction;
- If this occurs during the duration of this listing, Broker will be entitled to the compensation in paragraph 8 for services performed for Seller, as well as the buyer's broker compensation in paragraph 10(a) for services performed for buyer;
- **the Seller should therefore take this into consideration when negotiating compensation;**
- Broker may receive separate compensation from buyer for services rendered to buyer by Broker.



Remember the Code of Ethics

- Transparency, disclosure, and informed consent
- Remember the requirements of Article 7:
- In a transaction, Realtors® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the Realtor®'s client or clients.
(Amended 1/93)

Can a listing broker communicate offers of compensation on a broker *website* which has an IDX or VOW feed?



- Yes, MLS Participants may augment with offers of compensation to buyer brokers or other buyer representatives for ***only listings of their own brokerage.***

Where else can we display commissions?



- Signage
- Distributed compensation agreement forms for the property, i.e. copies at an open house or at the property
- Our forms are designed so that as the buyer's agent you get comp if your buyer closes

Is it OK for me to have a blanket statement on my website that says we offer Buyer broker commissions on every listing and just not given an amount?



- Not consistent with the spirit of the settlement
- I recommend that you not have preprinted forms or preprogrammed language
- Talk to each seller or buyer about the transaction and fees for services, not just the amount but who pays. Sellers should decide. All aspects of comp is negotiable.

56. Who will be responsible for enforcing the written agreements and ensuring all parties follow this new practice change?



- MLSs will be responsible for enforcing the rule regarding written agreements, like MLSs enforce other existing rules.
- MLSs have their own rules so check your MLS to know exactly what is required.

What if the listing agent refuses to show property if the buyer's broker doesn't show them the written buyer agreement?



- Participants have the duty to cooperate which is to share information on listed property and *to make property available to other brokers for showing to prospective purchasers* and tenants when it is in the best interest of their clients.
- **Standard of Practice 3-10** The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/ landlords.

Can I choose to publish my cooperative commission offer in the agent remarks of my MLS?



- NO
- The new rule would prohibit offers of compensation anywhere on an MLS.
- Remember the language of our footnote.

Can sales associates display offers of comp on their website along with an IDX feed?



- Yes, MLS Participants may augment MLS data or data feeds with offers of compensation to buyer brokers or other buyer representatives for only listings of their own brokerage.

75. Is there an NAR MLS policy about seller concessions?



- No, MLSs will continue to have local discretion on seller concessions. This includes determining what local rules to have about seller concessions, except under the settlement an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

Will seller concessions communicated on an MLS be binding on the seller?



- Seller concessions usually aren't binding until they are established in an executed contract such as a listing agreement or a purchase contract.
- It will be important to have the Seller memorialize these agreement in the compensation or listing forms.

TOOLS
Resources



FLORIDA REALTORS® 2024
HOMEGROWN
Professionalism / Advocacy / Inclusion

Florida Realtors® Webpage Visit Frequently



NAR SETTLEMENT

A dark blue banner with a grid of colorful icons (purple, red, blue) representing real estate concepts like keys, handshake, gavel, house, shopping cart, and a "FOR SALE" sign. The Florida Realtors logo is centered at the bottom of the banner.

NAR Settlement:

What You Need to Know

FloridaRealtors®
The Voice for Real Estate® in Florida

UPDATED ON JULY 30, 2024

Share this page: [f](#) [t](#) [in](#) [p](#) [+](#)

NAR Settlement: Forms, Resources, Webinars from Florida Realtors

FREE WEBINARS



UPDATED ON JULY 30, 2024

Share this page: [f](#) [t](#) [in](#) [e](#) [+](#)

FREE Webinars: Understanding Buyer Broker Agreements

Make sure you're up-to-date on the way the real estate business is changing. Some webinars will earn you 3 CE hours.

8.6.24 Buyer Representation: What You Need to Know - A Conversation with Patti Ketcham

Date & Time	Aug 6, 2024 01:00 PM in Eastern Time (US and Canada)
Description	Because all Realtors must change the way they do business when dealing with buyers, it is more important than ever that you have the tools and knowledge you need to conduct your business successfully. In this webinar you will learn: How we got to where we are and why; What is required on August 17; Understand Florida "agency relationships" and Buyer Representation; and Forms - Buyer Broker Agreements, New Compensation Agreements and Showing Agreements.





BROKER-TO-BROKER AGREEMENTS 101

Effective August 17, 2024, MLS Participants are prohibited from communicating any offer of compensation via an MLS. All broker compensation fields will be eliminated on MLSs opting into the settlement practice changes.

The settlement empowers consumers with choice when it comes to services, compensation, and marketing strategies that meet their needs. Real estate professionals should work with sellers to ensure they fully understand their options, including the ability to make offers of compensation off-MLS to brokers working with buyers.



WRITTEN BUYER AGREEMENTS 101

Written buyer agreements benefit consumers because they clearly and transparently outline the services an MLS Participant will provide and how they will be compensated.

Beginning August 17, 2024, an MLS Participant “working with” a buyer will be required to enter into a written agreement with the buyer prior to touring a home, including both in-person and live virtual tours. This resource provides information about what provisions must be included in the written agreement pursuant to the NAR settlement as well as other provisions that, while not required by the settlement, MLS Participants may consider addressing with their clients.

As you develop or refresh your agreement forms, keep in mind:

- Agreement forms should account for the choice and optionality consumers and real estate professionals have when negotiating the terms of their relationship permissible under state law.
- Agreement forms should give the real estate professional and consumer the ability to efficiently memorialize the relationship based on the transparent and clear conversation they have when deciding to work together.



Understanding & Navigating Upcoming Practice Changes

A Guide for Real Estate Professionals

Summer 2024



More info at facts.realtor





SUMMARY OF MLS POLICY CHANGES

Executive Summary

Pursuant to the requirements of the proposed Settlement Agreement, the MLS policies and model MLS governing documents were reviewed and updated with the key changes below.

1. Eliminate and prohibit any requirement of offers of compensation in the MLS between listing brokers or sellers to buyer brokers or other buyer representatives.
2. Retain, and define, "cooperation" for MLS Participation.
3. Eliminate and prohibit MLS Participants, Subscribers, and sellers from making any offers of compensation in the MLS to buyer brokers or other buyer representatives.
4. Require the MLS to eliminate all broker compensation fields and compensation information in the MLS.
5. Require the MLS to not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.
6. Prohibit the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use must result with the MLS terminating the Participant's access to any MLS data and data feeds.
7. Reinforce that MLS Participants and Subscribers must not, and MLSs must not enable the ability to, filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent.
8. Require compensation disclosures to sellers, and prospective sellers and buyers.
9. Require MLS Participants working with a buyer to enter into a written agreement with the buyer prior to touring a home.

These policy changes were approved by the NAR Leadership Team and will be effective on August 17.

For additional information go to: <https://www.nar.realtor/the-facts>.

SETTLEMENT FACTSHEET



NAR and plaintiffs have reached a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions. The agreement would resolve claims against NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all association-owned Multiple Listing Services (MLSs), and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. The settlement is subject to court approval.

The Facts for REALTORS®

NAR Settlement FAQs



Share

Updated July 31, 2024

[Overview & Terms](#) [Who is Covered](#) [Practice Changes & MLS](#) [Impact](#) [Financing](#) [NAR Ops](#)

Note: New or revised FAQs are noted with the date added or updated.

Expand all

Settlement Overview and Key Terms

- 1. Why did NAR enter into this settlement? +
- 2. What are the key terms of the agreement? +
- 3. Does this settlement mean that NAR is admitting that plaintiffs' allegations are true? +



REALTOR BENEFITS
POWERFUL PARTNERSHIPS

Advertisement

Downloads

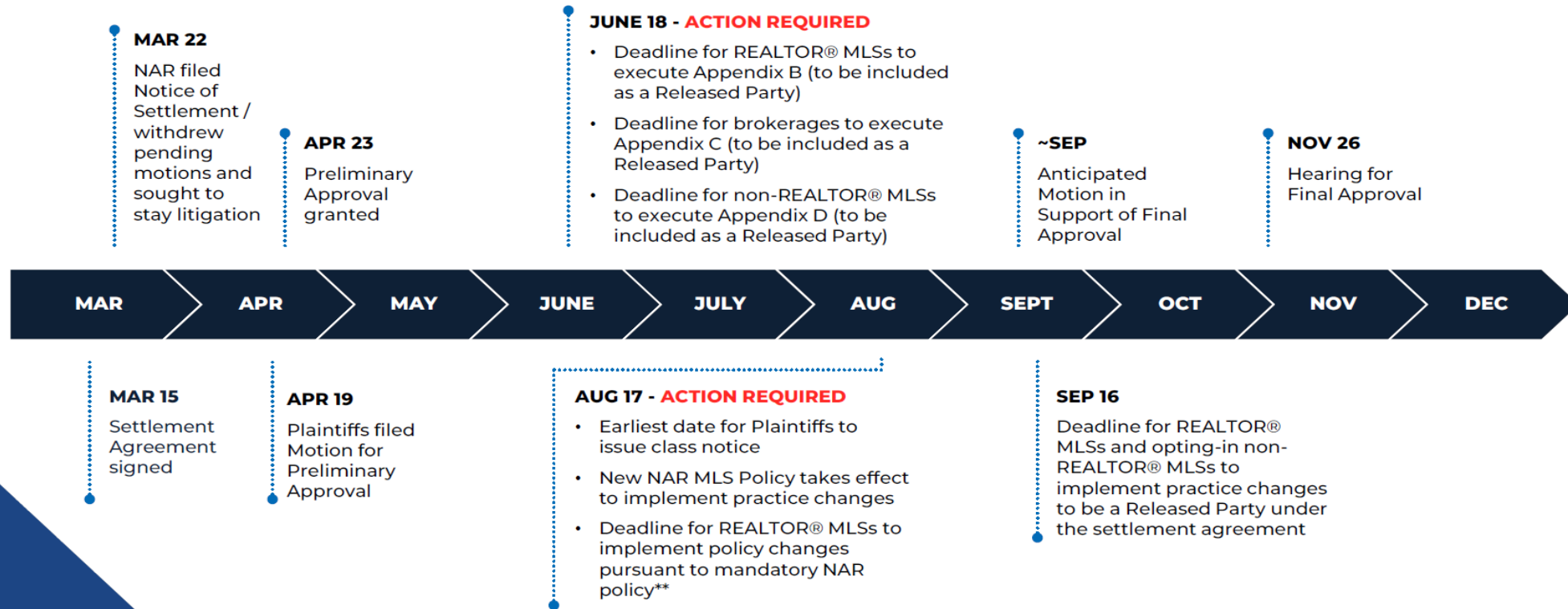
NAR Settlement FAQ - English
↓ pdf 342.64 kb

Updated July 31, 2024

NAR Settlement FAQ - Español
↓ pdf 379.22 kb

Updated July 8, 2024

NAR SETTLEMENT TIMELINE*



*As of May 7, 2024. Please refer to the settlement agreement for detailed information on deadlines.

**NAR encourages all MLSs to implement the practice changes by August 17, 2024.

More information on the effective date of practice changes can be found in our FAQ at facts.realtor.



HOME SELLERS: HERE'S WHAT THE NAR SETTLEMENT MEANS FOR YOU

As a home seller, you have a wide range of choices when it comes to listing your home. Agents who are REALTORS® are a trusted source of advice and stand ready to help you navigate this complex process and make the choices that work best for you. NAR's recent settlement has led to several changes related to broker commissions that benefit sellers, and we wanted to clearly lay them out for you.

Here is what the settlement means for home sellers:

- You still have the choice of offering compensation to buyer brokers. You may consider doing this as a way of marketing your home or making your listing more attractive to buyers.
- Your agent must conspicuously disclose to you and obtain your approval for any payment or offer of payment that a listing broker will make to another broker acting for buyers.



HOMEBUYERS: HERE'S WHAT THE NAR SETTLEMENT MEANS FOR YOU

Buying a home is one of the largest financial transactions most people will ever undertake. Agents who are REALTORS® are a trusted source of advice and stand ready to help you navigate your homebuying journey and make the choices that work best for you. NAR's recent settlement has led to several changes that benefit homebuyers, and we wanted to clearly lay them out for you.

Here is what the settlement means for homebuyers:

- You will sign a written agreement with your agent before touring a home.
- Before signing this agreement, you should ensure it reflects the terms you have negotiated with your agent and that you understand exactly what services and value will be provided, and for how much.
- The buyer agreement must include four components concerning compensation:

NAR Tools - Resources



The Facts for REALTORS®

Window to the Law: Settlement Facts Videos



Share

Question and answer video series about the NAR settlement and new practice changes and MLS rules.



How Will Existing Offers of Compensation Change

VIDEO | JULY 30, 2024



How Listing Agreements Are Changing

VIDEO | JULY 30, 2024



What Does the Class Action Notice Mean for REALTORS®

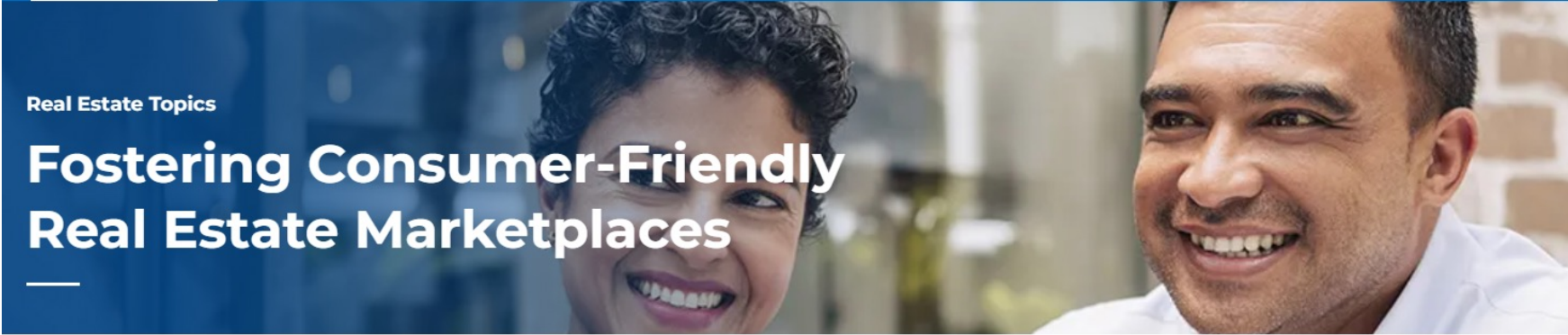
VIDEO | JULY 30, 2024

NAR Tools – Resources – Competition.Realtor



NATIONAL ASSOCIATION OF REALTORS® Search [REALTOR® Store](#) [Contact](#) [Pay Dues](#) [Sign In](#)


[Real Estate Topics](#) [Membership](#) [Research & Statistics](#) [Advocacy](#) [Education](#) [News & Events](#) [About NAR](#) [More](#)



[REALTORS® as Champions](#) [Consumer Access & Opportunity](#) [Fostering Business Competition](#) [FAQs](#) [In the News](#)

What the NAR Settlement Means for Home Buyers and Sellers

The settlement includes some changes to real estate transactions, but importantly, consumers will continue to

A photograph showing a woman with long blonde hair, likely a realtor, pointing towards a house. A man and a woman are standing in front of the house, looking at the realtor. The scene is outdoors with a bright sky.

Correcting the Record: NAR Does Not Set Commissions

Following recent inaccuracies in media coverage, including the false representation or suggestion that NAR requires a

A photograph of four people (two men and two women) sitting around a table in a meeting. They appear to be in a professional setting, possibly a conference room or office, with papers and a laptop on the table.

Resources

- Florida Realtors Legal Hotline:
407-438-1409

