

Industry Updates SIMPLIFIED - FAQs and Best Practices

1. MLS Policy Changes – Overview – Two Major Changes

1. Buyers' Representation Agreement is now Required

- **When is a Buyer's Rep Agreement required?** Prior to "touring" a home with a Buyer – either in-person or virtually.
 - **Do video tours count?** Yes. If a Buyer has specifically requested a video or live walk through of a home, that counts. Sending a marketing video you have of a home that isn't specific to the Buyer, does NOT.
 - **IF you are showing YOUR listing where you represent the SELLER, and the buyer is unrepresented, you do not need a Buyer's Rep Agreement for them to view the property.** However, if they ask you to work further worth them on that property, or to view others then you would need to utilize the RF 143 and select the option to facilitate AND your seller has to allow such by signing an updated Confirmation of Agency selecting you as Facilitator for the listing side as well.
 - **What if another party tours the home on the Buyers' behalf?** It is recommended that you have an *Amendment (RF 641)* to your Buyer's Representation Agreement that those individuals will be touring on behalf of the Buyer, or if you know up-front, include that in the Special Stipulations.
Another option to consider is using a Non-Exclusive Buyer's Representation Agreement (RF 143) with special stipulations that the individual(s) are touring on behalf of another Buyer but if they choose to purchase a property shown to them on behalf of that Buyer, what the compensation would be.
 - **Exclusive vs Non-Exclusive:** Think of the Non-Exclusive as the getting to know you period before entering into a long-term arrangement.
 - **When would you use the RF 143 Non-Exclusive Buyer Representation Agreement?** When working as a Facilitator up-front.
 - **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? When IS the agreement required?** No. 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.
 - Facilitating is considered to be "working with" a buyer. Added 8/8/24 per NAR. (RF 143)
- 2. Compensation cannot be mentioned *or alluded to anywhere in the MLS.*** Use caution in how you advertise it elsewhere. Additionally, keep in mind that without a signed RF 702, it isn't binding.

2. Buyer's Rep Agreement: Buyer paying Compensation

1. How will buyer brokers get paid now?

- Offers of compensation will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. The types of compensation available for buyer brokers would continue to take multiple forms, including but not limited to: Fixed-fee commission paid directly by consumers, Concession from the seller, Portion of the listing broker's compensation
- 2. Can buyers and buyer brokers rely on an offer of compensation that was on an MLS prior to the effective date of the MLS policy changes?**

- If the sales contract was executed before the MLS policy change, the buyer broker should be able to rely upon the offer of compensation even if closing occurs after the date of the policy change.
 - But if a sales contract was not executed before the date the participant's MLS implements the policy changes, the offer on an MLS will not be valid and buyers and buyer brokers may wish to protect themselves in writing with the listing broker or seller through a broker agreement or by including the offer of compensation in the sales contract.
3. If the seller or the listing broker offers a bonus or financial incentive in addition to the offer of broker compensation, can the buyer broker accept the extra compensation?
- 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. **You would need to amend your Buyer's Rep Agreement to allow you to accept x amount.
4. In the Buyer's agreement, can we put a range of 1-3% compensation to be negotiated with Seller? (In case seller counters back lower than 3% then we are still covered). Or would the language "up to 3%" be better? **Don't undervalue yourself on your buyer rep agreement.
- Per NAR: In the buyer agreement, can buyers and buyer brokers agree to a range of compensation? No. Under the settlement, any compensation agreed to in the written buyer agreement must be objectively ascertainable and not open-ended. For example, a written buyer agreement cannot have a commission that is "buyer broker compensation shall be whatever amount the seller is offering to the buyer" or "between X and Y percent."
 - Importantly, NAR policy will not dictate the amount of compensation agreed between buyers and buyer brokers (e.g., \$0, X flat fee, X percent, X hourly rate). (Updated 7/15/2024)
5. If I'm writing an offer for a buyer and asking for closing costs to be paid by the seller, I always use 'up to', because I'm letting the seller know that even if the total closing costs are more than we're asking for, the seller will still only have to pay that 'up to' amount. However, now that we're asking for seller to pay the buyer's agent professional fee as a separate thing than closing costs on the P&S, it seems better to me to ask for that in a matter-of-fact way, rather than the 'up to' language where the seller could think, 'well, he's telling us the max he'll take as commission, maybe he'll take less ...'.
- The reason for the use of "up to" was to be able to combine what may already be offered to a maximum of what is being requested. In some cases a seller will be offering 2% and we may be wanting 3%. The up to helps seller understand that it not an *additional* 3% over what they are offering.
 - ***ALTERNATE VERBIAGE OPTION***
"In addition to any concessions credited to the Buyer in the Purchase and Sale Agreement, Seller agrees to pay the Broker representing the Buyer in the amount of _____% of the full purchase price or \$_____. This is in addition to any amount already agreed upon in the Compensation Agreement Between the Listing and Selling Broker, if applicable."
6. Regarding asking the listing agents if their seller is paying...I think what we are all going to have to do is step away from what "seller is offering" and embrace, "my buyer client has instructed me to make this offer contingent upon my fee of.... Being paid by the seller" Many companies are taking the position of not offering any buyer rep compensation on listings at the same time explaining to their seller that fees are going to be requested. And to Expect this.

- ***“Buyers’ Instruction: Buyers Purchase Price Offer is Contingent on Seller Agreeing to Pay up to ___% of Purchase Price towards Buyers Agent Compensation at Closing. This amount to include, but not be limited to, any co-operative compensation being offered and paid on behalf of seller by seller’s listing brokerage.”***

7. **What about VA loans and the prohibition on buyers paying commissions directly?**

- The Department of Veterans Affairs (VA) recently announced that it has temporarily lifted its ban on buyers paying for real estate agent representation. Veteran buyers now have more options, ensuring they can have professional access to representation in their home buying process. The VA’s policy takes effect on August 10.
- The VA is evaluating the need for a formal rulemaking process on this issue.
- NAR has strongly advocated for this change as we want to ensure veterans maintain access to the VA home loan program, which has been a significant tool in helping service members achieve the American dream of homeownership.
- NAR recently submitted a letter to VA urging them to make this revision to their policies. (Updated 7/8/2024)

8. **What additional documentation needs to be provided to title:**

- RF 702 Compensation Agreement Between Listing and Buyer Broker
- Buyers Broker Agreement (and any applicable Amendments)
- Purchase and Sale Agreement - Make sure they know where compensation is coming from, amount, and limits
- Don’t provide your Buyer Brokerage Employment Agreement to listing side
- Don’t provide your Exclusive Right to Sell Listing Agreement to the buyer side

3. **Listing Agreement: Sellers paying Compensation**

1. **Is there a benefit to the seller offering a seller concession/credit to buyer to compensate their own agent rather than compensation to Listing Broker to pay as a co-op to Selling Broker?**
 - What about lender limits on the amount a buyer can receive as a credit?
 - Can the seller pay/credit the selling broker directly?
2. **If the seller doesn’t want to indicate a set amount because they want it negotiated in an offer then what do we indicate on the listing agreement?**
 - I usually suggest to agents that they add verbiage to the listing agreement, in the special stipulations, such as: ***Seller authorizes Listing Broker to disclose to Buyer Brokers that the Seller may be willing to compensate the Buyer Broker based on the merits of the Buyers’ offer.*** This is added as a reminder to the Seller that we discussed it prior to an offer being delivered.
3. **Can we use the RF 702 Compensation Agreement prior to an offer submission?** Absolutely. If the Seller is offering blanket compensation to Buyer Brokers as an aspect to the Listing, do NOT rely on verbal communication, text messages or emails – request the RF 702 and have it signed prior to the submission of the offer. Otherwise, plan on negotiating it in the Purchase and Sale.

4. **Seller Concession Amount in Realtracs**

1. **My Listings: Seller Concessions Offered:** <https://supporthub.realtracs.com/my-listings-adding-seller-concessions-field>
2. **Understanding Realtracs Seller Concessions Fields:** [https://20846796.hs-sites.com/sellerconcessions?utm_medium=email&hsenc=p2ANqtz--yWdZZ \[%E2%80%A6\]&hsmi=314020018&utm_content=314020018&utm_source=hs_email&hstc=249317144.436d90fd1ac61c479dbce3fe254c288c.1692799181146.1724081067173.1724083451903.615&hssc=249317144.2.1724083451903&hsfp=1996115899](https://20846796.hs-sites.com/sellerconcessions?utm_medium=email&hsenc=p2ANqtz--yWdZZ [%E2%80%A6]&hsmi=314020018&utm_content=314020018&utm_source=hs_email&hstc=249317144.436d90fd1ac61c479dbce3fe254c288c.1692799181146.1724081067173.1724083451903.615&hssc=249317144.2.1724083451903&hsfp=1996115899)

3. Will seller concessions communicated on an MLS be binding on the seller?
 - **As a general matter, seller concessions usually aren't binding** until they are established in an executed contract such as a listing agreement or a purchase contract.
4. As an agent when you see an x% amount set, ensure you receive a signed RF 702 confirming that amount – preferably prior to submitting an offer.

- **What about a Retainer Fee? Can that be charged?**

- Developing a program the agents *may* utilize.
- Formatted as an additional program where a buyer can opt-in to select services and the upfront fee applies.
- If a retainer is utilized, the brokerage will release the funds to the agent upon the fund clearing with the brokerage.
- For retainers \$1000 or less, there will be a \$25 processing fee deducted by the brokerage
- For retainers \$1001 and above there will be a \$100 processing fee deducted by the brokerage

- **Which documents are we going to be going over on the mandatory zoom meeting, so they can be printed out?**

5. RF 141 -- Exclusive Buyer Representation Agreement (Designated Agency)
 - Easy-Out Clause – If buyer cancels which properties are excluded.
6. RF 143 – Non-Exclusive Buyer Representation Agreement (Designated Agency)
7. RF 101 - Exclusive Right to Sell Listing Agreement (Designated Agency)
8. RF 702 - Compensation Agreement
 - How this coordinates with broker co-ops
 - Not applicable when there is a credit from seller to buyer

**Transaction Coordinator In-House Preview – \$25 fee upfront, nonrefundable.

- Uploading only \$100, paid at closing.
- Listing Service \$250, paid upfront, nonrefundable.
- Full-service \$350, paid at closing.

**Courtesy to Buyers Broker – Sign Riders – will be available in office for \$10 for you to purchase, if you'd like.



**Courtesy to
Buyer Brokers**