

# **Supplemental Information For “The Unease about Brokerage Fees” Rev. August 29, 2024**

## **Procedural Matters for Buyer-Brokers:**

FIRST, DETERMINE WHO WILL PAY YOU

1. Prior to the offer’s being made, contact the listing agent or unrepresented seller and ask whether the seller and/or listing firm is offering cooperative compensation.

POSSIBILITY #1: ASSUMING THAT SOMEONE OTHER THAN YOUR BUYER WILL PAY YOU:

- If the listing agent or unrepresented seller has advertised cooperative compensation somewhere off the MLS, you may contact them to confirm the terms of cooperative compensation.
- If the seller or listing firm is offering cooperative compensation, you should reduce any agreement regarding cooperative compensation to writing outside the purchase contract.
  - o New Form 220 (Cooperating Compensation Agreement) or
  - o Form 150 (Unrepresented Seller Disclosure & Fee Agreement) will work depending on the circumstances.
- Any agreement that is reached as to cooperative compensation may be amended during the transaction if the contracting parties’ consent. See Standard of Practice 3-3.

POSSIBILITY #2: ASSUMING THE SELLER OR LISTING FIRM WILL NOT PAY YOU:

If the seller or listing firm will not offer cooperative compensation, you may:

- a. Ask whether either or both of them will consider offering it;
- b. Ask whether the seller will consider including a concession to the buyer in the purchase contract; or
- c. If the buyer consents in writing, you may negotiate cooperative compensation prior to submission of the buyer’s offer and condition the offer’s submission (and even the offer’s terms) on whether cooperative compensation can be negotiated.

If the seller or listing firm will not offer cooperative compensation, or if an offer of cooperative compensation is not sufficient to cover the buyer’s obligations under their agency agreement, you may:

- a. Submit the offer anyway and make clear to your buyers that they must pay your fee from their own funds;
- b. At the buyer’s written direction, not submit the offer to the seller and look at other properties; or

- c. Allow the buyers to terminate agency so they can make the offer themselves.

As a final resort, if you want to make an offer but you cannot obtain information about cooperative compensation even after making multiple efforts to obtain such information, then you can submit your buyer's offer to the seller or the listing agent along with a separate proposed agreement for cooperative compensation (Form 150 or Form 220 will work). If the buyer directs you in writing, you may explain, in an email or other writing, that the buyer's offer is contingent on the seller's or listing agent's separate agreement as to cooperative compensation.

Agents are strongly recommended to consult with their BIC and legal counsel to make sure any such conditional language used in this scenario will be effective and achieve the intended result.

### **What Buyer Agents and Listing Agents Cannot Do**

1. Buyer agents and listing agents cannot put the terms of their compensation in the buyer and seller's pre-printed offer to purchase and contract. (Compensation agreements have to be separate—in agency agreements, for example).
2. Buyer agents and listing agents cannot attach any kind of addendum, including Forms 150 or 220, to a pre-printed offer to purchase and contract that addresses agent compensation.
3. Once the buyer's offer is made, a listing agent may not unilaterally modify cooperative compensation that they have offered off the MLS. (See Standard of Practice 3-2.)
4. Buyer agents may not, without the written consent of their client, condition a buyer's offer on a potential agreement as to cooperative compensation.
  - a. If there is no cooperative compensation, or if the cooperative compensation offered is not enough to satisfy the buyer's obligations under the agency agreement, then the buyer must pay for their agent's services from their own funds.
  - b. If the buyer cannot pay the agent from their own funds, then the buyer agent and the buyer may discuss the terms on which agency may be terminated. To prevent this scenario, however, buyer agents must have thorough discussions with their clients prior to the signing of a buyer agency agreement regarding how the agent will be paid.

## Other Resources

- FAQ: Changes to TMLS from the NAR Settlement August 6th, 2024:

<https://support.trianglemls.com/hc/en-us/articles/31177771889939-FAQ-Changes-to-TMLS-from-the-NAR-Settlement-August-6th-2024>

- From Triangle MLS Zoom program:

Matt and John discussed the current status of the MLS, the proposed settlement in the antitrust case against the National Association of Realtors, and the requirement for North Carolina brokers to have a written buyer agent agreement. They also clarified the terminology used in the real estate industry, the new approach to negotiated compensation, and the rules regarding the display of compensation on real estate websites. Lastly, they addressed the decision not to add the seller concession field to their MLS, the terms and conditions of offering compensation to buyer agents, and the handling of assumable loans and buyer agency commission.

[https://us02web.zoom.us/rec/play/-YEBkt4wTznb7t2kVPrUvSt8tsE7HW1HICZQTCJ2-EFJ8sTTLaBxSbWkw7Q38Vgnspq1NlhoTUy8uDOn.o8ROLQJ4SU1etRbE?canPlayFromShare=true&from=share\\_recording\\_detail&continueMode=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fus02web.zoom.us%2Frec%2Fshare%2FZD0YLvlfkvEf6Q8NYzqFNv7iG7CoPAb1s173R4-jpa4vS5X2htHqfcvT7K\\_MuWt-.410nJHEwwEdTi-Rd](https://us02web.zoom.us/rec/play/-YEBkt4wTznb7t2kVPrUvSt8tsE7HW1HICZQTCJ2-EFJ8sTTLaBxSbWkw7Q38Vgnspq1NlhoTUy8uDOn.o8ROLQJ4SU1etRbE?canPlayFromShare=true&from=share_recording_detail&continueMode=true&componentName=rec-play&originRequestUrl=https%3A%2F%2Fus02web.zoom.us%2Frec%2Fshare%2FZD0YLvlfkvEf6Q8NYzqFNv7iG7CoPAb1s173R4-jpa4vS5X2htHqfcvT7K_MuWt-.410nJHEwwEdTi-Rd)

**Password: 19AsXR0%**

- ***If we are independent and our own broker, is there a help line or resource number, other than the NAR legal hotline, to help with confusion/questions?***

NCR can be reached through their legal hotline at (336) 294-1415

[legal@ncrealtors.org](mailto:legal@ncrealtors.org) or their tech hotline at (877) 573-5612.

- ***How do I get compensation in compliance with the new MLS rules, NC license law and the Code of Ethics?***

<https://www.ncrealtors.org/question/navigating-cooperative-compensation-in-compliance-with-the-license-law-and-the-code-of-ethics/>

More from NCAR:

Guidelines for Offers of Cooperative Compensation Outside the MLS

- <https://www.ncrealtors.org/question/guidelines-for-offers-of-cooperative-compensation-outside-the-mls/>

NC REALTORS® General Counsel John Wait provided a comprehensive overview of the 2024 Forms Changes on our Mobile Mondays Facebook Group. We recorded it and now offer two ways to catch the replay:

- Watch on Facebook (you must be a member of the Mobile Mondays Group)
- Watch on YouTube: <https://www.youtube.com/watch?v=80V8SCQjAnw>

For a more detailed explanation of the form changes, NC REALTORS® General Counsel John Wait has created a series of informative videos. These videos cover some of the updated forms and explain the changes in detail. You can watch the full playlist here.

<https://www.youtube.com/watch?v=GrUi9PfyB4Y>

The playlist includes videos for the following forms:

- Form 101
- Form 201 Part 1
- Form 201 Part 2
- Form 203
- Form 220
- Form 715
- Form 770

Please also see <https://www.nar.realtor/the-facts>.

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### **Housing market hinges on mortgage rates and supply, not commission structures<sup>1</sup>**

Economists weigh in on how the business practice changes mandated by the NAR commission lawsuit settlement may impact the housing market

August 8, 2024, 4:57 pm By Brooklee Han

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<sup>1</sup> [https://www.housingwire.com/articles/interest-rates-not-commission-structure-will-dictate-housing-market-conditions/?utm\\_campaign=Newsletter%20-%20HousingWire%20Daily&utm\\_medium=email&\\_hsenc=p2ANqtz-\\_48gQuvw1o7TSdkP5DLI04rViQ7GDqZhqc0q\\_wUddDXleFTg76U5mKduc4rI-1k1tPVdC-b6tdxwF6MCSpAfg5VXxvT9AxvzhnFbQge7pCc63sac&\\_hsmi=319347996&utm\\_content=319347996&utm\\_source=hs\\_email](https://www.housingwire.com/articles/interest-rates-not-commission-structure-will-dictate-housing-market-conditions/?utm_campaign=Newsletter%20-%20HousingWire%20Daily&utm_medium=email&_hsenc=p2ANqtz-_48gQuvw1o7TSdkP5DLI04rViQ7GDqZhqc0q_wUddDXleFTg76U5mKduc4rI-1k1tPVdC-b6tdxwF6MCSpAfg5VXxvT9AxvzhnFbQge7pCc63sac&_hsmi=319347996&utm_content=319347996&utm_source=hs_email)

Although there is no doubt that business practice changes outlined in the National Association of Realtors' (NAR) nationwide commission lawsuit settlement agreement are going to impact how real estate industry professionals operate, economists aren't too sure they'll have much bearing on the housing market.

"I know that surprises people," Orphe Divounguy, a senior economist at Zillow, said of the impact of business practice changes on the market. "Ultimately, the reason 80% of people move is because of life changes — getting married, starting a family. So, I look at the determinants of housing demand and the determinants of housing supply, and who pays commission are not part of that list.

"Incomes, wealth, life events, mortgage rates all play a role in determining housing demand, while on the supply side we have land costs, government regulations in terms of zoning rules, geographic constraints to building and builder financing costs," Divounguy added. "So, I don't think the commissions discussion will have much of an impact on the housing market as a whole."

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### **What buyer's agents are being paid in your market<sup>2</sup>**

Commissions have come down the most in Detroit since the NAR settlement deal, but they've actually gone up in Cincinnati

August 7, 2024, 11:50 am By James Kleimann

The typical American home seller pays a 2.55% commission to the real estate agent hired by their home's buyer. That's down from an average of 2.62% in January, before the NAR settlement was announced in March.

This is according to Redfin, which analyzed MLS data of rolling four-week periods through July 14. The analysis includes listings that offer a commission to the buyer's agent and excludes listings that offer no commission or for which the commission field is missing.

Some highlights:

In dollar terms, the average commission paid to a buyer's agent in the U.S. is \$15,377, up slightly from \$15,124 in January, attributed to the uptick in home prices.

Per Redfin, the average percent commission paid to buyer's agents has steadily come down since the NAR settlement was announced, though the decrease is small and the dollar amount paid to buyer's agents has held steady.

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<sup>2</sup> <https://www.housingwire.com/articles/what-buyers-agents-are-being-paid-in-your-market/#:~:text=The%20typical%20American%20home%20seller,settlement%20was%20announced%20in%20March.>

Also, buyer's agent commissions had already been in decline, falling from an average of 2.89% in 2013 to 2.66% in 2023. This would appear to mark a change from 2022, when RealTrends reported that overall commission rates reached their highest point since 2013 at 5.32%.

In examining the largest 50 metropolitan statistical areas in the country, Redfin found that commission percentages have declined most in Detroit since the NAR settlement. The average commission paid to a buyer's agent there was 2.87% during the four weeks ending July 14, down from 3.18% in January. Cleveland 🗝️ (2.39%, down from 2.62%) and Miami 🌴 (2.63%, down from 2.84%) followed.

Commission percentages are highest in Austin, TX (2.99%), Cincinnati (2.95%) and San Antonio (2.91%). They're lowest in Nassau County, NY (1.95%), Providence, RI (2.05%), and Anaheim, CA (2.11%).

Cincinnati is an interesting one. Commissions actually increased to 2.95% from 2.93%. They held steady in New Brunswick, NJ (2.15%) and the Philadelphia suburbs of Montgomery County (2.44%).

Buyer agent commissions are down to 2.11% in Anaheim and 2.20% in San Diego, markets with extremely low inventory levels and high prices.

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#### **How this firm has always dealt with commissions:**

[https://www.housingwire.com/articles/agents-are-freaking-out-over-de-coupled-commissions-its-old-hat-for-this-iowa-brokerage-owner/?utm\\_campaign=Newsletter%20-%20HousingWire%20Daily&utm\\_medium=email&\\_hsenc=p2ANqtz-8e1smtZPjIwGDRta8dzfSZVCgaWa0hcQMIMxGUI9fHtwTeQ5whoD06TKpvjHRpOTyOOgZ6oImByROklBS9dN\\_VjA6qESCmZaEtT1k4dfH6ih35JbY&\\_hsmi=319795401&utm\\_content=319795401&utm\\_source=hs\\_email](https://www.housingwire.com/articles/agents-are-freaking-out-over-de-coupled-commissions-its-old-hat-for-this-iowa-brokerage-owner/?utm_campaign=Newsletter%20-%20HousingWire%20Daily&utm_medium=email&_hsenc=p2ANqtz-8e1smtZPjIwGDRta8dzfSZVCgaWa0hcQMIMxGUI9fHtwTeQ5whoD06TKpvjHRpOTyOOgZ6oImByROklBS9dN_VjA6qESCmZaEtT1k4dfH6ih35JbY&_hsmi=319795401&utm_content=319795401&utm_source=hs_email)

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### **Has the World Exploded? The NAR Settlement, Commission Law and Rules**

#### **October 2024 eBulletin**

##### **From the NCREC: What is a Broker to Do?**

Let's begin by saying that the world has not exploded. There are important changes taking place that have a particular impact on brokers who are REALTOR members. Earlier this year, the National Association of REALTORS® (NAR) entered into a settlement agreement in which it agreed to the following two practice changes, among other things:

- Compensation offers are prohibited in a Multiple Listing Service MLS.
- MLS participants working with buyers are required to enter into written agreements with their buyers before touring a home.

To have a full understanding of these practice changes and their relation to License Law and Commission Rules, brokers must understand that this change is mandated as part of a civil

settlement between private parties and does not change or override License Law, or Commission rules. It involves members of NAR, state and local REALTOR associations, and various[KC1] MLS entities. The Commission licenses and regulates brokers who are members of these various entities, but many of the Commission's licensees are NOT members of any of these entities. Those licensees may be impacted but are not otherwise subject to these new rules.

Now let's dive into the two major practice changes for brokers who are subject to the settlement.

### **A. Compensation Offers**

Communication with buyers and sellers has always been essential, but in the post-settlement world, it is imperative. If you are a listing broker, you should discuss offers of compensation with your seller-clients at the time of listing and explain the pros and cons of offering compensation. If they are agreeable to such an offer, they can sign NC REALTORS® Form #220 (Cooperating Compensation Agreement) up front and you can have it ready for any prospective buyers. The seller can also delay agreeing to any offer of compensation until a later date or decide to do so on a case-by-case basis.

If you are seeking to represent a buyer, once you have made the proper agency disclosure utilizing the, "Working With Real Estate Agents" (WWREA) publication, a proper agency relationship should be established either orally or in writing to meet the requirements of Rule 58A .0104. As part of the creation of the agency relationship, you should disclose the full amount of your fee in your discussions and explain to your client that if they choose a home with an offer of compensation, and that offer is less than their fee, the client will be responsible for paying the difference. If there is no offer of compensation, the buyer will be responsible for paying the full fee to you at closing. When you identify properties that meet your buyer's criteria, you should determine whether or not there are offers of compensation on each property and present that information to your buyer-client so they can determine which properties they want to view. In this way, the buyer is able to make a fully informed decision. If you cannot determine whether or not there is an offer of compensation, you should inform your buyer of that as well and remind them of the possible scenarios.

Here are a few important things to know about offers of compensation involving North Carolina brokers who are subject to the REALTOR settlement:

- Are compensation offers eliminated? Absolutely not. They are prohibited from being offered in the MLS, but they may still be offered by either the listing firm/broker or the seller.
- Can I attach a contingency to the standard offer to purchase making the offer contingent on an agreement to compensate me as the buyer agent? No. Commission Rule 58A .0112 prohibits this. Any offer to compensate a buyer broker is between the listing firm/broker or the seller and the buyer broker and should not be part of the contract between the buyer and the seller.
- Can a buyer ask for seller concessions in their offer and use those concessions to pay their buyer broker? Yes. However, seller concessions can be used by the buyer for whatever purpose the buyer chooses and there is no guarantee they will be used to pay the buyer broker.
- If a buyer broker uses the NCR form 220, can it be sent to the listing broker simultaneously with the offer to purchase? As a last resort, yes. However, the buyer broker must be clear that the offer is not contingent on the signing of the 220. The buyer must also understand that the

seller might sign the offer, creating a binding contract, but not sign the 220 agreeing to pay the buyer broker compensation or they may sign the 220 agreeing to only part of the compensation, leaving the buyer responsible for the rest.

- Can the buyer broker send form 220 and an unsigned offer to purchase, and wait for the seller to sign both before the buyer signs either? Yes. Keep in mind that even if the seller agrees to both as submitted, no contract will be formed until the documents are signed by all parties and acceptance is communicated. The best practice is for a buyer broker to determine what properties suit their buyer client's needs, what compensation is being offered, if any, and present the properties and offers of compensation to the buyer to determine which properties the buyer may want to view or consider further based on their own financial situation.
- If I am a listing broker, is it better for my seller to not agree to offer compensation up front and wait to see what the offer is before agreeing to pay a buyer broker's fee or to go ahead and offer it up front? Either is an option, and in both cases the seller can consider their bottom line in the context of the negotiation process.
- If I am a listing broker, and my seller signs a 220 before receiving any offers, does that mean they have to accept the first offer that comes along, or they still owe the buyer broker compensation? Certainly not. In the past, cooperating compensation was offered up front through the MLS, and buyers submitted offers that were not accepted, and no payment was due. Now, even though cooperating compensation offers are no longer made through the MLS, and the offer of compensation may not be the same from one property to the next, merely announcing the compensation offered in the event of a successful transaction does not bind the seller until a final agreement is reached. Listing brokers/firms should consult with their own attorneys to determine the best methods of advertising offers of compensation to remain in compliance with the terms of the NAR settlement. Just remember, form 220 states that the entitlement to the compensation will be determined by the buyer broker's performance as the procuring cause of any sale of the property to the broker's client. The seller can still negotiate any offer.

### **Written Agreements with Buyers**

Under the terms of the NAR settlement agreement, beginning August 17, 2024, MLS participants working with buyers are required to enter into written agreements with their buyers before touring a home. Touring a home includes situations where the buyers and broker visit the home and walk through it together as well as when the broker visits the home and provides a video tour for the buyers who may not be local. It does not include videos posted by a listing broker to advertise the property, even when those are viewed by a buyer.

The NAR settlement language does not require an agency agreement, just a written agreement. However, a North Carolina broker cannot be a non-agent; the broker must either represent the seller or the buyer and should use the Working with Real Estate Agents Disclosure form to make the appropriate disclosure. If the broker is representing the buyer, the Commission rules allow an oral agency agreement until the time an offer is written, but the settlement requires an agreement in writing.



Buyer brokers have always had the option of requiring buyers to sign a buyer agency agreement prior to touring any homes. Some are concerned that a buyer may not be ready to sign a full buyer agency agreement at that point in time. Those brokers may choose to use a non-exclusive buyer agency agreement. Other entities have created “touring agreements” that permit a broker to show a home to a buyer.<sup>3</sup> These touring agreements contain provisions for some small fee or no fee at all, and are limited to one day, one week, one property, etc. As stated earlier, communication with a potential buyer-client is crucial at this stage, including an understanding of who the broker represents – buyer or seller. It must be one or the other. Buyer brokers should discuss each of these possibilities with buyers and let the buyer determine which is best for them.

Any touring agreement or other type of agreement designed to meet the NAR settlement requirement must comply with Commission rule A.0104. This rule includes both agency agreements and any other agreements for real estate brokerage services. Touring a home with or for a buyer is a real estate brokerage service, so any agreement for these services must be for a definite period of time, include the broker’s license number, provide for termination without prior notice at the expiration of that period, and contain the required Fair Housing language.

Brokers-in-charge should create written policies and train their affiliated brokers in how to navigate working with sellers and buyers and emphasize communication with all parties as being key. The world is not exploding, it is a shift in the practice of brokerage that can be navigated by thoughtful planning and communication. In the end, the goal remains the same for all, and that is to find buyers for sellers wanting to sell and helping buyers get into a home that meets their needs. All parties working together can continue to make the dream of home ownership a reality.

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**A simple buyer-broker agreement can be found here:**

<https://consumerfed.org/wp-content/uploads/2024/06/Buyer-Broker-Representation-Agreement-FORM-vsn-USA-EN-05.29.2024.pdf>

Make sure your company attorney reviews it and adapts it to NC standards. Please note: **Per NCREC Rule A.0104(a & b), all written agency agreements must (1) be signed by all parties; (2) include the broker’s real estate license number; (3) have a definite termination date; and (4) contain the prescribed nondiscrimination provision.**

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**Have questions about the settlement?**

**NAR has information for brokers who need more information.**

- <https://tinyurl.com/y88wp5cx>
- Go here for answers to these questions:

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<sup>3</sup> Zillow has a touring agreement that can be found here: <https://deanknows.com/wp-content/uploads/2024/05/Touring-Agreement-by-Zillow.pdf>

- How do I know if I am covered?
- What is required for brokerages with residential transaction volume in 2022 that exceeded \$2 billion to obtain releases?
- What is required for non-REALTOR® MLSs to obtain releases?
- What is required for REALTOR® MLSs to obtain releases?

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### No 'horror stories' from agents on the first weekend of NAR settlement changes<sup>4</sup>

From 'uneventful' to 'the wild west,' real estate agents had a range of experiences on the first weekend following business practice changes

August 19, 2024, 5:22 pm By [Brooklee Han](#)

The landmark date of [Aug. 17, 2024](#), has come and gone, and the real estate industry is still plugging along, despite the business practice changes mandated by the [National Association of Realtors'](#) (NAR) [commission lawsuit settlement agreement](#) now being implemented nationwide.

In the Greater Boston area, [Linda O'Koniewski](#), the broker-owner of **Leading Edge Real Estate**, described the first few days of the business practice changes as "uneventful." But even though O'Koniewski and her agents have spent months preparing for these changes, she said the date did not come without a sense of trepidation.

"I won't tell you that there wasn't anxiety," O'Koniewski said. "When we got to the close of day on Friday, we were all kind of waiting to see if it was going to be a big event and then it wasn't. Not that individual agents might be struggling or running into things, but I haven't seen or heard any horror stories or anything awful yet."

According to real estate professionals, the biggest adjustments they had to make this week was to get buyers to sign [buyer representation agreements](#) and to explain to sellers that while they [don't have to offer buyer broker compensation](#), they will most likely see most prospective buyers ask for some help in paying their agent.

"The biggest difference is that sellers need to have the new format and commission structure explained to them fully and carefully," said Rachael Dotson, an agent at Rhode Island-based **Residential Properties Ltd.** "Many are interested in the potential savings created by the new commission structure. Still, none of them want to jeopardize their sale by deterring buyers

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<sup>4</sup> From Housing Wire: [https://www.housingwire.com/articles/no-horror-stories-from-agents-on-the-first-weekend-of-nar-settlement-changes/?utm\\_campaign=Newsletter%20-%20HousingWire%20Daily&utm\\_medium=email&hsenc=p2ANqtz--WLHJSlwFk0f3fk2-qY3b2PzEuTulxnNAU4vTcL9lfy1\\_aTfWGV5TITO2uSWTEZrpgWDBoZSks4VitlhoQAlu9aGDzzbkAatgeA4M0ezl8sR2SE8&hsmi=320785465&utm\\_content=320785465&utm\\_source=hs\\_email](https://www.housingwire.com/articles/no-horror-stories-from-agents-on-the-first-weekend-of-nar-settlement-changes/?utm_campaign=Newsletter%20-%20HousingWire%20Daily&utm_medium=email&hsenc=p2ANqtz--WLHJSlwFk0f3fk2-qY3b2PzEuTulxnNAU4vTcL9lfy1_aTfWGV5TITO2uSWTEZrpgWDBoZSks4VitlhoQAlu9aGDzzbkAatgeA4M0ezl8sR2SE8&hsmi=320785465&utm_content=320785465&utm_source=hs_email)

who might have to forgo representation or cannot afford to pay commission out of pocket to their agent.

“Most sellers see the value of making sure their deal closes and are open to discussions of some participation in the buyer’s agent fee.”

On the buy side, agents say they are glad buyer representation agreements are now mandatory.

“I do like that we have to have a buyers representation agreement to show all houses now. We can get in a lot of trouble for showing a house without one,” said Mandy Nichols, an agent at Dallas-Fort Worth-based **Brixstone Real Estate**. “In the past, some people would use agents to show them houses, and then go let someone else do the paperwork and purchase the house for them, which was horrible.

“I know quite a few agents it hurt. It’s nice to know that when you show a property that they have to use you to buy the home, unless you had them sign you were just showing the property and not representing them.”

But for some agents, getting buyers to sign these agreements hasn’t exactly been smooth sailing.

“Presenting these agreements is becoming the line of delineation between great agents and not-great agents. It is really leveling the playing field,” said Jason Posnick, the sales manager at **Lamacchia Realty**.

Over the weekend, Posnick said one of his firm’s agents met with a buyer who had previously met with an agent at another firm and was not pleased that the agent asked them to sign a buyer representation agreement. The Lamacchia Realty agent ultimately was able to secure a meeting with the buyer after presenting two different agreements — a showing agreement and a more formal buyer representation agreement — which allowed the consumer to see they had options and explained why they were being asked to sign an agreement.

In addition to dealing with consumers, agents are also having to deal with other agents, some of which may not be as well prepared as others.

“One of my agents actually called me on Friday and talked about how we’ve done such a good job preparing that they have gotten to the point where they feel like the changes are no big deal, but that might be a little bit of a disadvantage in the short term because it seems like the rest of our market kind of has no idea what they are doing,” said Brad Twiss, the broker-owner of Portland, Oregon-based **Neighbors Realty**.

Another wrinkle is that not all agents, brokerages or sellers are handling offers of buyer broker compensation the same way. While some firms — including **eXp Realty**, **Lamacchia Realty** and **NextHome** — are [not engaging in cooperative compensation](#) on their listings, other agents like Lindsay Pettinelli still plan to offer it if their seller agrees to it.

“The fact that we are not allowed to disclose buyers’ agent compensation in the MLS doesn’t seem beneficial to the buyer,” said Pettinelli, an agent at Providence, Rhode Island-based firm **Churchill & Banks**. “There are many buyers who don’t have the funds to pay their agent’s commission out of

pocket along with their down payment and closing costs; they are relying on the list price including compensation for their agent.

“If buyer agent compensation is not offered as part of the list price for a house, I think it is valuable for a buyer to know that upfront. Why would we not disclose that info in MLS? How is that protecting buyers?”

Pettinelli is using contracts with her sellers that outline the total commission she will charge and how much she is going to pay another agent for bringing a qualified buyer to the transaction. She also noted that she will be advertising offers of cooperative compensation on her social media channels and alongside listings on her brokerage’s website.

Although O’Koniewski acknowledges that some agents may take a similar route to Pettinelli, she has told her agents to view seller concessions as “totally irrelevant.”

“It doesn’t matter,” O’Koniewski said. “If buyer’s agents have a buyer agreement for a certain amount, that is what they need to get. They can’t make more if the seller is being generous, so I don’t know why they are even asking what the seller is offering. I think that is the missing piece of the puzzle for a lot of agents right now.”

Complicating things for O’Koniewski and her agents is that **MLS PIN**, one of the multiple listing services her firm uses, is still displaying offers of buyer broker compensation on the MLS, as it did [not opt into NAR’s settlement](#).

“It is causing a lot of consternation, and I’ll admit that our agents are a little bummed out that we aren’t doing it, but I feel like by putting compensation in the MLS, that is like Kryptonite for agents and brokerages right now. It is putting a target on your back, but there are some big brokerages here, I think, that are choosing to live dangerously,” O’Koniewski said.

Twiss attributes agent and brokerage apprehension about the removal of buyer broker compensation offers from the MLS to a fear that once it is removed from the MLS, sellers will no longer be willing to help with buyer broker compensation.

“I don’t think that is the case,” Twiss said. “Our agents have been having discussions with sellers to expect buyers asking for help with their agent fees, and I don’t think it has been a big deal.”

Across the country in Rhode Island, Dotson also said sellers thus far seem to be willing to entertain offers that ask for help with buyer agency fees.

“The changes are still very new, and most sellers seem willing to participate on some level as they understand the importance of buyers having guidance and representation to get to the closing table,” Dotson said.

While agents may differ on how exactly they are dealing with the business practice changes, they all agree on the fact that it is still too early to tell how exactly their businesses and markets will be impacted.

“Just like with [TRID](#), it will take a while to see how it will affect the marketplace, and for a few months, it will just be chaos,” said Brian Huskey, the associate broker of Montana-based **ERA American Real Estate**.

“We are just answering so many questions from consumers who saw things on the news this weekend, and agents who have done a ton of training but are still figuring how to deal with these changes in real time. It is just the Wild West again.”

Montana’s state-run reverse mortgage program has cash on hand to assist seniors. A Board of

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**Canopy MLS to become an “open MLS”**

Canopy MLS to become an “open MLS”: <https://apps.carolinarealtors.com/files/Open-MLS-Transition-Announcement-8-16-2024.pdf>