



NAR SETTLEMENT AND ITS EFFECTS

ON BUYER, SELLERS, LISTING BROKER, BUYER'S BROKER

INTRO

KEY RESOURCES ON FLORIDATREALTORS.ORG

- NAR SETTLEMENT RESOURCES
- FORM DESCRIPTIONS
- FORMS, CONSUMER GUIDES AVAILABLE IN SPANISH
- NAR SETTLEMENT VIDEO RESOURCES
- NAR SETTLEMENT: BUYER BROKER AGREEMENTS



BIBLIOGRAPHY. WHERE CAN I GET MORE INFO?

- [FACTS.REALTORS](https://www.facts.realtors)
- [HTTPS://WWW.NAR.REALTOR/THE-FACTS](https://www.nar.realtor/the-facts)
- [REALESTATECOMMISSIONFACTS.COM](https://www.realestatecommissionfacts.com)
- [COMPETITION.REALTOR](https://www.competition.realtor)
- [FLORIDAREALTORS.ORG/NAR-SETTLEMENT](https://www.floridarealtors.org/nar-settlement)
- [HTTPS://COMMUNITY.ALTA.ORG/HOME](https://community.altapro.org/home)

KEY FORMS: BUYER

[HTTPS://WWW.FLORIDAREALTORS.ORG/TOOLS-RESEARCH/FORM-DESCRIPTIONS](https://www.floridarealtors.org/tools-research/form-descriptions)

- BUYER'S BROKER FORMS:
- **PROPERTY PRE-TOURING AGREEMENT (PPTA-1)**
- **SHOWING AGREEMENT (SA-4)**
- **COMPENSATION AGREEMENT – SELLER TO BUYER'S BROKER CASB-1)**
- **COMPENSATION AGREEMENT – SELLER'S BROKER TO BUYER'S BROKER (CABB-1)**

KEY FORMS: SELLER

- SELLER'S BROKER FORM:
- **EXCLUSIVE BROKERAGE LISTING AGREEMENT (EBLA-12)**
- **YOU CAN CAN FIND ALL THE FORMS IN FORMS.SIMPLICITY**

NAR SETTLEMENT IS NOT LAW IT IS A NAR RULE PRESENTATION

- THE LEGAL ARGUMENT WAS THAT NAR WITH THE MLS AND THE FORCED COLLABORATING RULE CREATED A MONOPOLY TO THE DETRIMENT OF BUYERS AND SELLERS WHO PAID HIGHER COMMISSIONS AND PURCHASE PRICES.
- BOTH SELLERS AND BUYERS ARE SUING FOR DAMAGE UNDER ANTITRUST LAWS.
- THE SETTLEMENT IS NOT LAW IT IS A RULE THAT ALL MLS SUBSCRIBERS NEED TO ABIDE TO.



**DOES THIS MAKE ME A SINGLE AGENT?
AM I STILL CONSIDERED A TRANSACTION
AGENT?
HOW IS OUR BROKERAGE RELATIONSHIP
AFFECTED BY SIGNING A BBA?**

- BY SIGNING A BUYER BROKER AGREEMENT – IT DOES NOT CHANGE YOUR AGENCY STATUS.



NO NEED FOR AGREEMENT WHEN SPEAKING TO LISTING AGENT AT AN OPEN HOUSE

- BUYERS DO NOT NEED A WRITTEN AGREEMENT WHEN JUST SPEAKING TO A LISTING AGENT AT AN OPEN HOUSE OR ASKING THEM ABOUT THEIR SERVICES.
- BUT IF LISTING AGENT BECOMES BUYER'S BROKER AS WELL THEN LISTING AGENT WILL NEED A WRITTEN BUYER'S AGREEMENT WITH THE PROPER DISCLOSURES AND LANGUAGE.



KEY QUESTIONS:

SELLER

1. HOW TO COMMUNICATE OFFERS OF COMPENSATION
2. 2. HOW SELLER CONCESSIONS WORK

BUYER

3. WHEN DO YOU NEED WRITTEN BUYER AGREEMENT
4. TERMS OF WBA



WHEN SELLER IS NOT OFFERING COMPENSATION

- IF THE SELLER IS NOT PAYING BUYER BROKER COMPENSATION, THE BUYER WILL BE RESPONSIBLE FOR PAYING THEIR AGENT IF AGREED TO IN THE BUYER'S WRITTEN AGREEMENT.
- IF SELLERS HAVE NOT OFFERED COMPENSATION, BUYERS CAN REQUEST IN THEIR OFFER THAT SELLERS COMPENSATE THE BUYER BROKER OR REQUEST A SELLER CONCESSION.



WHEN SELLING BROKER OFFERS COMPENSATION

- THE LISTING BROKER OR THE SELLER MAY OFFER COMPENSATION TO THE BUYER'S AGENT, BUT THERE ARE LIMITATIONS TO HOW THAT OFFER CAN BE MARKETED—I.E., BROKERS CAN NO LONGER COMMUNICATE OFFERS OF COMPENSATION ON A MULTIPLE LISTING SERVICE (MLS)*.
- HOW WILL A BUYER'S AGENT KNOW IF THERE IS AN OFFER OF COMPENSATION? OFFERS OF COMPENSATION CAN BE ADVERTISED IN MANY WAYS. IF YOU APPROVE AN OFFER OF COMPENSATION, IT CAN BE SHARED THROUGH COMMON MARKETING METHODS SUCH AS FLYERS, SIGNS, BROKERAGE WEBSITES, SOCIAL MEDIA POSTS, OR SIMPLY THROUGH A PHONE CALL OR EMAIL.
- OFFERS OF COMPENSATION **CANNOT BE** LISTED ON MULTIPLE LISTING SERVICES (MLSS), ONLINE PLATFORMS THAT COMPILE HOME LISTINGS FROM MANY DIFFERENT SOURCES.
- BUYER CAN MAKE OFFERS INCLUSIVE OF COMMISSIONS STRUCTURES.



WHEN SELLER OFFERS SELLER'S CONCESSIONS

- SELLERS CAN STILL OFFER—AND BUYERS CAN STILL ACCEPT—CONCESSIONS SUCH AS OFFERS TO PAY THE BUYER'S CLOSING COSTS.



REAL ESTATE PRACTICE CHANGES WHEN DO YOU NEED WRITTEN BUYER AGREEMENT?

- BUYERS MUST SIGN A WRITTEN AGREEMENT WITH THEIR CHOSEN BROKER BEFORE TOURING A HOME—WHETHER IN PERSON OR LIVE VIRTUALLY.
- THE AGREEMENT WILL REFLECT THE TERMS THEY HAVE NEGOTIATED WITH THEIR AGENT, INCLUDING WHAT SERVICES WILL BE PROVIDED, FOR HOW MUCH AND HOW THE AGENT WILL BE COMPENSATED
- IF THE SELLER IS NOT PAYING BUYER BROKER COMPENSATION, THE BUYER WILL BE RESPONSIBLE FOR PAYING THEIR AGENT IF AGREED TO IN THE WRITTEN AGREEMENT.



WHEN TO USE A WBA

THE PRACTICE CHANGE REQUIRING WRITTEN AGREEMENTS WITH BUYERS IS TRIGGERED BY TWO (2) CONDITIONS:

- 1) IT ONLY APPLIES TO MLS PARTICIPANTS "WORKING WITH" BUYERS AND
- 2) THE WRITTEN AGREEMENT MUST BE ENTERED INTO PRIOR TO "TOURING A HOME."



WRITTEN BUYER AGREEMENTS MUSTS CONTAIN:

MANDATORY PROVISIONS

PURSUANT TO PARAGRAPH 58(VI) OF THE NAR PROPOSED SETTLEMENT AGREEMENT, WRITTEN BUYER AGREEMENTS MUST:

- SPECIFY AND CONSPICUOUSLY DISCLOSE THE AMOUNT OR RATE OF ANY COMPENSATION THE MLS PARTICIPANT WILL RECEIVE FROM ANY SOURCE;
- THE AMOUNT OF COMPENSATION MUST BE OBJECTIVELY ASCERTAINABLE AND MAY NOT BE OPEN-ENDED (E.G., “BUYER BROKER COMPENSATION SHALL BE WHATEVER AMOUNT THE SELLER IS OFFERING TO THE BUYER”);
- INCLUDE A STATEMENT THAT MLS PARTICIPANTS MAY NOT RECEIVE COMPENSATION FROM ANY SOURCE THAT EXCEEDS THE AMOUNT OR RATE AGREED TO WITH THE BUYER;
- DISCLOSE IN CONSPICUOUS LANGUAGE THAT BROKER COMMISSIONS ARE NOT SET BY LAW AND ARE FULLY NEGOTIABLE; AND
- INCLUDE ANY PROVISIONS REQUIRED BY LAW.

BROKER TO BROKER COMPENSATION SELLER CONSENT IS REQUIRED

- THE REALTOR® OR MLS PARTICIPANT MUST CONSPICUOUSLY DISCLOSE TO SELLERS AND
- OBTAIN SELLER APPROVAL FOR ANY PAYMENT OR OFFER OF PAYMENT THAT A LISTING BROKER
- WILL MAKE TO ANOTHER BROKER ACTING FOR BUYERS; AND
- THIS DISCLOSURE MUST BE MADE TO THE SELLER IN WRITING IN ADVANCE OF ANY PAYMENT
- OR AGREEMENT TO PAY ANOTHER BROKER ACTING FOR BUYERS AND
- MUST SPECIFY THE AMOUNT OR RATE OF SUCH PAYMENT.
- OFFERS OF COMPENSATION CAN BE MADE OFF-MLS

SUMMARY OF KEY POINTS TO KNOW

- FOR SELLER:
 - CAN MAKE A SELLER'S CONCESSION TO BUYER
 - CAN DISCOUNT THE PRICE
- FOR SELLER'S BROKER:
 - CANNOT ADVERTISE COMMISSION ON THE MLS, BUT
 - CAN ON BROKER'S PRINT, EMAIL, AND WEBSITE
- FOR BUYER'S BROKER:
 - NEEDS A SHOWING AGREEMENT & NEEDS A WRITTEN BUYER'S AGREEMENT TO BE PAID A COMMISSION
 - WHO PAYS? SELLER? SELLER'S BROKER? BUYER?
 - NOT PART OF THE SELLER BUYER CONTRACT
 - IF THE BUYER'S BROKER COMMISSION IS PAID BY THE SELLER IT MIGHT NOT BE ENFORCEABLE IF IT IS ONLY LISTED ON THE SELLER BUYER CONTRACT.
 - **BUYER BROKER MIGHT NEED AN AGREEMENT WITH SELLER, SELLER'S BROKER AND WITH BUYER.**
 - THE AGREEMENT MUST SAY THE COMMISSION IS NEGOTIABLE, WHAT THE COMMISSION STRUCTURE TO BUYER'S BROKER AND TO SELLER'S BROKER IS.
- FOR BUYER:
 - ENSURE VISIBILITY ON THE COMMISSION STRUCTURE AND NEGOTIATE A SELLER OR SELLER'S BROKER CONCESSION TOWARDS THE BUYER'S BROKER COMMISSION.
 - ENSURE VISIBILITY ON ALL THE DISCLOSURES, AN AGREEMENT LIMITED IN SCOPE, WITH A PROVISION FOR CONCESSIONS CREDITS TOWARDS THE BUYER'S BROKER COMMISSION.
 - IF SELLERS HAVE NOT OFFERED COMPENSATION, BUYERS CAN REQUEST IN THEIR OFFER THAT SELLERS COMPENSATE THE BUYER BROKER.

KEY POINTS TO KNOW

- FOR SELLER:

YOU WANT TO BE ABLE TO NEGOTIATE THE COMMISSION YOU PAY TO SELLER AND TO BUYER BROKER IF APPLICABLE

- FOR SELLER'S BROKER:

IF YOU ARE SHARING YOUR COMMISSION OR HAVING THE SELLER PAY FOR THE BUYER'S BROKER'S COMMISSION YOU CANNOT DISCLOSE IT AND ADVERTISE IT ON THE MLS.

- FOR BUYER'S BROKER:

AS BUYER'S BROKER YOU WANT TO MAKE SURE YOU GET PAID BY THE SELLER. THAT YOUR CLIENT, THE BUYER, GETS REIMBURSED FOR IT VIA A CONCESSION OR THAT YOU GET PAID BY THE SELLER'S BROKER.

- FOR BUYER:

AS A BUYER YOU WANT TO KNOW IN WRITING HOW MUCH YOUR BROKER (BUYER BROKER) GETS PAID BY EITHER THE: BUYER, SELLER, OR SELLER'S BROKER

CONCLUSION:

- 1. WRITTEN AGREEMENT REQUIREMENT:** HOMEBUYERS WILL NEED TO SIGN A WRITTEN AGREEMENT WITH THEIR AGENT BEFORE TOURING A HOME. THIS AGREEMENT SHOULD REFLECT NEGOTIATED TERMS, OUTLINE SERVICES PROVIDED AND SPECIFY COMPENSATION DETAILS CLEARLY.
- 2. COMPONENTS OF BUYER AGREEMENT:** THE BUYER AGREEMENT MUST INCLUDE SPECIFIC COMPONENTS RELATED TO COMPENSATION, SUCH AS A DISCLOSURE OF THE AMOUNT OR RATE OF COMPENSATION, OBJECTIVE COMPENSATION TERMS, A LIMIT ON COMPENSATION EXCEEDING THE AGREED AMOUNT, AND A STATEMENT THAT BROKER FEES ARE NEGOTIABLE.
- 3. APPLICABILITY OF WRITTEN AGREEMENTS:** WRITTEN AGREEMENTS ARE NECESSARY FOR BOTH IN-PERSON AND LIVE VIRTUAL HOME TOURS. HOWEVER, THEY ARE NOT REQUIRED IF A HOMEBUYER IS SIMPLY SPEAKING TO AN AGENT AT AN OPEN HOUSE OR INQUIRING ABOUT SERVICES.
- 4. SELLER COMPENSATION:** SELLERS MAY OFFER COMPENSATION TO THE BUYER'S AGENT, BUT THIS OFFER CANNOT BE SHARED ON A MULTIPLE LISTING SERVICE (MLS), WHICH IS USED BY BUYER BROKERS AND LISTING BROKERS TO EXCHANGE PROPERTY INFORMATION.
- 5. CONTINUED ETHICAL OBLIGATIONS:** DESPITE THE CHANGES, AGENTS WHO ARE REALTORS® REMAIN COMMITTED TO HELPING HOMEBUYERS NAVIGATE THE PROCESS ETHICALLY AND IN THEIR BEST INTEREST. COMPENSATION NEGOTIATION, ADHERENCE TO THE REALTOR® CODE OF ETHICS, AND TRANSPARENT DISCUSSIONS ABOUT COMPENSATION ARE STILL ESSENTIAL ASPECTS OF THE HOMEBUYING PROCESS.