

New Listing and Buyer Policies and Procedures

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Intro

- The way we have fundamentally operated in residential real estate is changing. BUT, it is basically the way Commercial and Farm and Ranch agents have always operated.
- The Department of Justice (DOJ) sued NAR over compensation practices and this is the result of a settlement
- Two major points:
- Listing agents can no longer offer compensation to a buyers agent through MLS. That field will go away around August 17th
- A buyers agent MUST have a written buyers representation agreement with a buyer before they start the process. MANDATORY by DOJ.
- PLEASE UPDATE YOUR FORMS TODAY!

Listings

- Revised listing agreement TAR 1101. Major impact is Paragraph 5A

5. BROKER COMPENSATION:

Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees.
(Complete either 5A or 5B only)

A. Broker's Fee (with compensation for other broker):

This Paragraph 5A includes payment of compensation to the other broker working with a buyer. Seller authorizes Broker to compensate the other broker as indicated below.

(1) When Earned and Payable, Seller will pay Broker *(insert total amount for Broker and other broker)* :

(a) _____ % of the sales price or \$ _____

(b) _____ .

(2) From amounts stated in 5A(1) above, Broker will pay the other broker the following fees if the other broker procures a buyer that purchases the Property:

(a) if the other broker represents the buyer: _____ % of the sales price or \$ _____ ; and

(b) if the other broker is a subagent: _____ % of the sales price or \$ _____

B. Broker's Fee (without compensation for other broker):

(1) When Earned and Payable, Seller will pay Broker *(insert amount to be paid to Broker only)* :

(a) _____ % of the sales price or \$ _____

(b) _____ .

Note: Seller Paying Buyer's Expenses. In addition to paying the above Broker's fees, Seller may be asked by a buyer to contribute an amount towards buyer's expenses, such as buyer's broker's fees or other expenses payable by buyer under a sales contract. **See Paragraph 11F regarding Broker's authority to disclose possible Seller contributions.**

Listings

- NEW: Our Company/Broker policy on compensation is that we will not take a listing with out offering a market commission rate to a buyers agent. WHY?
- Prepare to be bombarded with texts, emails and calls about compensation on your new listings. The best practice is to prepare TAR Form 2402 “Compensation Agreement Between Broker” with the buyers broker info blank and signed by you at the time of listing to email to agents. They will all ask.
- NEW: Our Company/Broker policy is the buyers agent must submit their buyers representation agreement with their offer. WHY?

Listings (Be Prepared)

- Buyers directly contacting you to see the property unrepresented will likely go up. Think of this before you take a listing and have proper responses for the buyer and seller to probably scenarios.
- NEW: Our current policy involving Sub-agency says that we do not work with sub agency. We may revisit that.
- Open houses. You do not need a buyers rep agreement.
- All this applies to leases as well.
- Any thing under contract today is grandfathered. If not, you will need to amend your listing agreements using TAR Form 1404.

Buyers

- NEW: Company/Broker policy is a signed buyers representation agreement is MANDATORY prior to showing properties. This is MANDATED by the Department of Justice (DOJ).
- TAR Form 1501, the long form. Major amendment:

Buyer/Tenant Representation Agreement between [REDACTED]

7. BROKER COMPENSATION:

Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested, by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees. Broker is prohibited from receiving compensation for brokerage services from any source that exceeds the amounts stated in this agreement.

A. **Broker's Fee: When Earned and Payable, Client will pay Broker (Complete all that apply) :**

(1) (Purchases) [REDACTED] % of the sales price or \$ [REDACTED] .

(2) (Leases) [REDACTED] % of one month's rent or [REDACTED] % of all rents to be paid over the term of the lease or \$ [REDACTED] .

B. **Source of Compensation:** Broker will seek to obtain payment of the fees specified in Paragraph 7A first from the seller, landlord, or their agents. **If such persons refuse or fail to pay Broker the amount specified, Client will pay Broker the amount specified less any amounts Broker receives from such persons.**

Buyers

- NEW FORM: TAR for 1507. The Short Form. 1 page buyers representation agreement. Best use is for a one time showing or fee for showing.

5. BROKER OBLIGATIONS: Broker must comply with minimum duties as required by law. Broker may represent other prospective buyers or tenants who may seek to acquire the same properties as Client. (Check only one box)

- Full Services. Broker will use Broker's best efforts to assist Client in the acquisition of property in the market area.
- Showing Services. Paragraphs 6, 7, and 8 do not apply. Broker will provide Client with access to properties in the market area. Client will pay Broker a fee of \$ [redacted] due upon execution of this Agreement.

6. CLIENT OBLIGATIONS: Client must: (a) work exclusively through Broker in acquiring property in the market area and (b) inform other brokers, sales agents, sellers, and landlords that Broker exclusively represents Client for the purpose of acquiring property in the market area and refer all such persons to Broker.

7. BROKER COMPENSATION:

A. Broker's Fees: When Earned and Payable, Client will pay Broker (Complete all that apply):

- (1) **(Purchases)** [redacted] % of the sales price or \$ [redacted] .
- (2) **(Leases)** [redacted] % of one month's rent or [redacted] % of all rents to be paid over the term of the lease or \$ [redacted] .

B. Earned and Payable: Broker's fees are Earned when Client enters into a contract to acquire property in the market area during the Term. Broker's fees are Payable, either during the Term or after it ends, upon the earlier of: (1) the closing of a transaction to acquire a property or (2) Client's breach of a contract to acquire a property in the market area. "Closing" means the date legal title to a property is conveyed to Client or the date Client enters a binding lease.

Buyers

- **NEW POLICY:** Our company/broker policy for buyer representation is that TAR Form 2406 “Addendum Regarding Brokers Fees” is used in all offers. **WHY?** To attempt to clear up any commission confusion up front. **Downsides?** Your commission may be negotiable.
- D. OTHER BROKER'S FEES:** Other Broker's fees will be paid as specified below, and Buyer shall pay any remaining amount due to Other Broker under a separate written representation agreement between Other Broker and Buyer. *(Check all that apply)*
- (1) Listing Broker shall pay \$ or % of sales price as contained in a separate written compensation agreement between Listing Broker and Other Broker (such as TXR 2402).
 - (2) Seller shall pay: *(Check one box only)*
 - (a) \$ or % of sales price as contained in a separate written compensation agreement between Seller and Other Broker (such as TXR 2401).
 - (b) \$ or % of sales price towards Other Broker's fees. (Note: Use this option only if there is no separate written compensation agreement between Seller and Other Broker.)

Amounts in (1) and (2)(a) are for informational purposes only and do not change compensation listed in separate written compensation agreements. Any amount listed in (2)(b) creates a new obligation for Seller.

Buyers

- If using the short form and check on “showing services” any fees will be viewed as commissions and must be paid to the broker. We will be available to take payments electronically.
- Agents must work harder on their value proposition to buyers and be able to clearly market yourself about what you can bring to the table. Experience. Negotiating skills. Local market knowledge. Transaction process expertise. Buyers may experience much greater challenges in the market by going with out an agent than ever before.
- The biggest change will be there is currently no place to find out compensation easily in the market. Currently.

NEW POLICIES

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- NEW: Company/Broker policy is a signed buyers representation agreement is MANDATORY prior to showing properties. This is MANDATED by the Department of Justice (DOJ).
- NEW POLICY: Our company/broker policy for buyer representation is that TAR Form 2406 “Addendum Regarding Brokers Fees” is used in all offers.
- If you have questions or want exceptions to our policies, call me or your manager.