

BROKER FAQ: BUYER REPRESENTATION AGREEMENTS

Do I need to have a Buyer Representation Agreement signed before showing a residential property to a potential buyer?

Yes, and in some situations even sooner than that.

All MLS participants working with a buyer must enter into a written Buyer Representation Agreement before the buyer tours any home. This applies to both live virtual tours and in-person tours.

In addition, Washington law requires that a broker working with a buyer must enter into a written services agreement with the buyer before, or as soon as reasonably practical after, the broker commences rendering real estate brokerage services to, or on behalf of, the buyer. So, if you are performing real estate brokerage services prior to touring a property with a buyer, you must have a written Buyer Representation Agreement signed with your buyer.

Beginning January 1, 2025, Oregon law will require that a services agreement be entered into before, or as soon as reasonably practical after, the broker has commenced efforts to assist the buyer in purchasing real property or in identifying real property for purchase. This means that the date by which you must have a Buyer Representation Agreement in place might be well before you tour a property with a buyer.

If I host an open house or get a sign call on one of my listings, am I required to enter into a written services agreement with an unrepresented buyer before touring the home?

No. If you are representing the seller only, and not the buyer, you do not need to enter into a written agreement with the buyer to show your listing. The same is true if you are hosting an open house on a colleague's listing. You do not need to have every person who comes to the open house sign a services agreement, unless you are going to represent that person in the purchase of the home or if you show them additional properties.

What if I get a lead on a John L. Scott listing that is not mine and the buyer wants to view the property?

Best practice is to schedule a buyer consultation with the interested buyer prior to scheduling a showing. Remember, you must have a written services agreement in place with that buyer prior to touring any residential property regardless of who the listing firm is.

What if I forget to get a Buyer Representation Agreement signed?

Failure to have the required Buyer Representation Agreement in place is not only a violation of agency laws, licensing laws, and MLS rules, it may mean that you are not entitled to receive compensation on the transaction once it closes. Alert your office leader immediately if you find yourself in this situation.

COMPENSATION

For the compensation amount in my Buyer Representation Agreement, can I put "whatever seller is offering" or a range?

No. The amount of compensation can be whatever you and the buyer agree to, whether it be \$0, x flat fee, x percent, x hourly rate, or something else. In all situations, the 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").

Can I leave the compensation section blank and fill it in after the buyer has selected a property?

No. The Buyer Representation Agreement is not enforceable if the compensation section is left blank.

Can a broker receive more compensation than stated in the Buyer Representation Agreement?

No. A 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.

Can a buyer request that the seller pay all or some of the buyer brokerage firm compensation?

Yes. As part of buyer's offer, the buyer can request a seller to pay all or some of the buyer brokerage compensation. Check with your MLS for the proper forms to use.

What happens if the seller does not pay the buyer brokerage firm compensation that was agreed to by the buyer and buyer broker in the Buyer Representation Agreement?

A seller is not required to offer or agree to pay buyer broker compensation, even if requested to do so in an offer from the buyer. In the event a seller chooses not to offer or pay buyer brokerage compensation and buyer decides to proceed with the purchase, buyer will be responsible to pay at closing the difference in any buyer broker compensation paid by the seller and the compensation agreed to in the Buyer Representation Agreement.

Can I reduce my compensation if the buyer does not have the funds to pay?

Yes. A broker can reduce the amount of compensation previously agreed to with their buyer with an amendment to the Buyer Representation Agreement. If the reduced compensation amount is only for a specific property, make that clear in the amendment by stating that it only applies to [address and MLS number of that property]. That way, if the sale of that specific property does not go through, the compensation will revert to what is stated in the original Buyer Representation Agreement.

Can a listing firm share a portion of their compensation with the buyer brokerage firm?

Yes. So long as the listing broker has disclosed the to the seller and obtained seller approval for any payment or offer of payment that a listing broker will make to another broker acting for buyers.

The 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.

What if an unrepresented buyer requests that seller's offer of buyer brokerage firm compensation be applied toward a reduction in price or closing costs?

Because there is no buyer brokerage firm, there is no buyer brokerage firm compensation and seller is not obligated to credit an unrepresented buyer any portion of their offer of buyer brokerage firm compensation. The seller may, if they choose to, apply any amount of the offer of buyer brokerage compensation toward the unrepresented buyer's reduction in purchase price or toward closing costs.

When filling out the purchase and sale agreement, brokers shall not fill in the buyer brokerage firm information, because there is no buyer brokerage firm.

However, if seller is offering concessions in the listing, an unrepresented buyer is entitled to concessions offered by seller and the concessions cannot be negotiated by the seller.

How do seller concessions work?

Although offers of buyer broker compensation will no longer be published on most MLSs, a seller may still offer buyer concessions on an MLS, for example concessions for buyer closing costs. Offers of buyer concessions cannot be conditioned upon a buyer being represented in the transaction.

Can a listing firm share a portion of their compensation with the buyer brokerage firm?

Yes. If you are the listing broker, prior to offering or agreeing to share any compensation with a broker representing a buyer, you must disclose the offer to the seller and obtain the seller's approval in writing.

If you represent the buyer, you must disclose to your buyer at the earliest moment possible, any offer of compensation from the listing broker to the buyer broker.

What if an unrepresented buyer wants me to write an offer on my listing?

Best practice is to have the unrepresented buyer share the terms of their offer with you in an email after you have complied with agency law by first sending them the consumer agency pamphlet and disclosing and confirming in the email that they are unrepresented and you represent the seller exclusively. Further recommend the buyer seek representation or have an attorney review the contract.

After the unrepresented buyer has shared the terms of the offer, you can fill in the forms based on their instructions, or you can share the terms of the offer with the seller and write a reverse offer with the seller to present to the unrepresented buyer.

Broker can not coach, counsel, advise, or advocate terms for the unrepresented buyer.

In the listing agreement or listing addendum, why is there a separate field "if the buyer is not represented", and what happens if this field is left blank?

With decoupling of compensation, the listing firm must negotiate with the Seller how much the Listing Firm will be compensated if the buyer is not represented. This 'second field' is the total Listing Firm Compensation when representing a seller with an unrepresented buyer. And if you are negotiating an additional amount of compensation for navigating the transaction with a buyer that is not represented, this total amount should be inserted into the second field.

If the second field is left blank, then the listing firm compensation shall be what is agreed with the seller as listing firm compensation stated in the first blank.