

Compensation & Listing Agreements FAQs

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- 1. What additional provisions must be included in written listing agreements because of the NAR Settlement practice changes?**
 - REALTORS® and MLS Participants working with sellers must disclose in conspicuous language that broker commissions are not set by law and are fully negotiable.
 - Additionally, a listing agency must conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing agency will make to another broker, or other representative acting for buyers. They must specify the amount or rate of such payment.
- 2. Do active listing agreements entered into before the NAR Settlement practice change need to be amended?**
 - Yes. The MAR Forms were updated in Zipforms on July 31, 2024 and include all of the new required terms under the NAR Settlement. If you had a pre-existing listing agreement entered into before July 31, 2024, please use the *Listing Agreement 2024 Addendum* which includes all of the required terms under the NAR Settlement.
 - Any new listing agreements entered into on or after July 31, 2024, should use the updated listing agreements currently available in Zipforms and the separate addendum would not be necessary in that scenario.

Navigating the MAR Exclusive Agency Listing Agreement and Exclusive Right to Sell Listing Agreement

*The Compensation Section of the listings agreements was intentionally created with Yes/No checkboxes to accommodate various company policies and seller choices.
None of these sections should be crossed out when the Yes/No checkboxes are used appropriately.*

- 3. What is included in the “listing commission” in the first paragraph of the Compensation section?**

COMPENSATION:

Agency commissions are not set by law and are fully negotiable.

In consideration of Agency's agreement to list and promote the sale of (all part of; If 'part of' see explanation or description attached hereto) Seller's property situated in municipality of _____, County of _____, State of Maine, located at _____ and described in deed(s) recorded at said County Registry of Deeds in Book(s) _____, Page(s) _____, the undersigned as Seller, hereby gives the Agency the exclusive right to sell or exchange said property at a price of \$ _____, and on the terms herein stated, or at any other price or terms to which Seller may authorize or consent. If, during the term of this agreement, a Buyer is produced who is ready, willing and able to purchase at said price, or any other price or terms to which the Seller may agree, or if the property is sold or exchanged by anyone, including the Seller, then Seller agrees to pay this Agency a listing commission of \$ _____ or _____ % of the purchase price, whichever is greater.

- The “listing commission” is intended to be the fee the seller agrees to pay for the services they are receiving under the listing agreement.
- **Note** - If the listing agency has a policy that offers cooperative compensation to buyer agencies, that should be included as part of the “listing commission.” (see #4 below)

4. What is an “offer of cooperative compensation”?

- An offer of cooperative compensation is when the listing agency offers to share a portion of their listing commission with a buyer agency (previously allowed in the MLS before the NAR Settlement practice changes became effective). If an agency is offering cooperative compensation, it should be included as a part of the total listing commission.

5. If the listing agency is paying cooperative compensation to the buyer agency, what form should be used?

- The *Agency Cooperative Compensation Agreement* should be used. This form is NOT to be used as an addendum to the Purchase and Sale Agreement and it is NOT to be displayed on the MLS. This is a separate written agreement between the listing agency and buyer agency.
 - **Note** – The form can be completed by agreement of the agencies at any time before or during the transaction. However, best practice would be to have this form completed no later than the time of entering the Purchase and Sale Agreement to comply with the *NAR Code of Ethics Standard of Practice 3-1*.

6. What is the purpose of the “Customer” section in the Compensation Section?

CUSTOMER

Yes No

If Buyer is a customer of Listing Agent and is not working with any other Agent or Agency, Seller agrees to pay this Agency an additional \$ _____ or _____% of the purchase price, whichever is greater.

- If the listing agency has a policy to charge the seller an additional fee (\$ or % of purchase price) for a transaction involving a buyer customer, the seller has the option to agree to that additional charge by checking “Yes”
- If the listing agency does not charge the seller an additional fee for buyer customers OR if the seller does not consent to the additional fee, this should be checked “No”

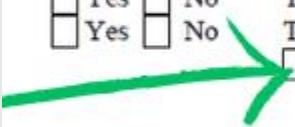
7. When should the “Buyer’s Agency” and “Transaction Brokers” sections be filled out?

BUYER'S AGENCY
 Yes No This Agency's policy is to cooperate with other agencies acting as Buyer's agents.
 Yes No This Agency's policy is to share compensation with Buyer agencies.
 Yes No If Yes, Seller consents to this Agency's policy of offering cooperative compensation to Buyer agencies for this transaction in the range of _____% to _____% of the purchase price.

TRANSACTION BROKERS
 Yes No This Agency's policy is to cooperate with other agencies acting as transaction brokers.
 Yes No This Agency's policy is to share compensation with transaction brokers.
 Yes No If Yes, Seller consents to this Agency's policy of offering cooperative compensation to transaction brokers for this transaction in the range of _____% to _____% of the purchase price.

- These two sections should always be filled out even if the answers are “No.” All of these disclosures are required under either the Maine Real Estate Commission (MREC) rules or the NAR Code of Ethics (COE).
 - *MREC Rule Chapter 410, Section 6(1)*, states “Written brokerage agreements must include a statement disclosing the real estate brokerage agency’s policy on cooperating with and compensating other real estate brokerage agencies in the sale or purchase of real estate....”
 - *NAR COE Standard of Practice 1-12* requires REALTORS® to advise sellers of the agency policies regarding cooperation and the amounts of any compensation offered to buyer agents
 - A definition of “cooperate” can be found in *Article IV of the Maine Listings Bylaws*, “Cooperation” (and its derivative forms including “cooperate”) means (a) or (b) or both: (a) sharing information on listed property and making property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of a listing broker’s clients; (b) attempting to find buyers or tenants for properties listed in the Service.
- If the response to the second check box is “Yes” and the listing agency’s policy is to share compensation with buyer’s agencies, the third Yes/No checkbox (*see screen shot below*) should be completed indicating whether the seller consents to the listing agency offering the specified amount of cooperative compensation to buyer’s agencies for this transaction. The purpose of the checkbox and seller consent here is due to the NAR Settlement practice changes requiring advance seller approval before an offer of compensation can be made to the buyer side.

BUYER'S AGENCY
 Yes No This Agency's policy is to cooperate with other agencies acting as Buyer's agents.
 Yes No This Agency's policy is to share compensation with Buyer agencies.
 Yes No If Yes, Seller consents to this Agency's policy of offering cooperative compensation to Buyer agencies for this transaction in the range of _____% to _____% of the purchase price.



- **Note** - The same guidance applies to the “Transaction Brokers” section if the listing agency offers cooperative compensation to transaction brokers

8. What is “Direct Payment to Buyer Agency”?

DIRECT PAYMENT TO BUYER AGENCY

Yes No In addition to the listing commission above, Seller agrees to offer a direct payment to a Buyer agency in the amount of \$ _____ or _____ % of the purchase price, unless otherwise agreed to in a purchase and sale agreement.

- A seller’s direct payment to buyer agency would be a separate charge to the seller at closing, “in addition to the listing commission.”
- A seller’s direct payment to the buyer agency is in addition to cooperative compensation, if any.

9. On the listing agreement, is the seller’s offer to make a direct payment to buyer agency binding for a later Purchase and Sale Agreement?

- No. The NAR Settlement practice changes require that the listing agency must obtain advance seller approval before making any offers of compensation to the buyer side. The purpose of this section in the listing agreement is for the listing agency to get advance approval from the seller to offer or market/advertise a direct payment to buyer agency. However, as the listing agreement indicates, the seller may always negotiate and agree to different terms with the buyer via the Purchase and Sale Agreement.

10. What form should be used for a “Direct Payment to Buyer Agency?”

- The *Seller Compensation Addendum* should be used. It clearly outlines that the seller agrees to pay buyer agency a \$ or % of purchase price at the time of closing.
- Many members have asked about writing in a direct payment in Paragraph #26 of the P&S. I generally do NOT recommend this practice for risk of confusion and the potential for unintended liability to the seller at the time of closing when other compensation forms are also used in the transaction.

11. What are “Buyer Concessions”?

BUYER CONCESSIONS

Yes No In addition to the listing commission above, Seller agrees to offer \$ _____ or _____ % of the purchase price towards Buyer's pre-pays, points and/or closing costs, unless otherwise agreed to in a purchase and sale agreement

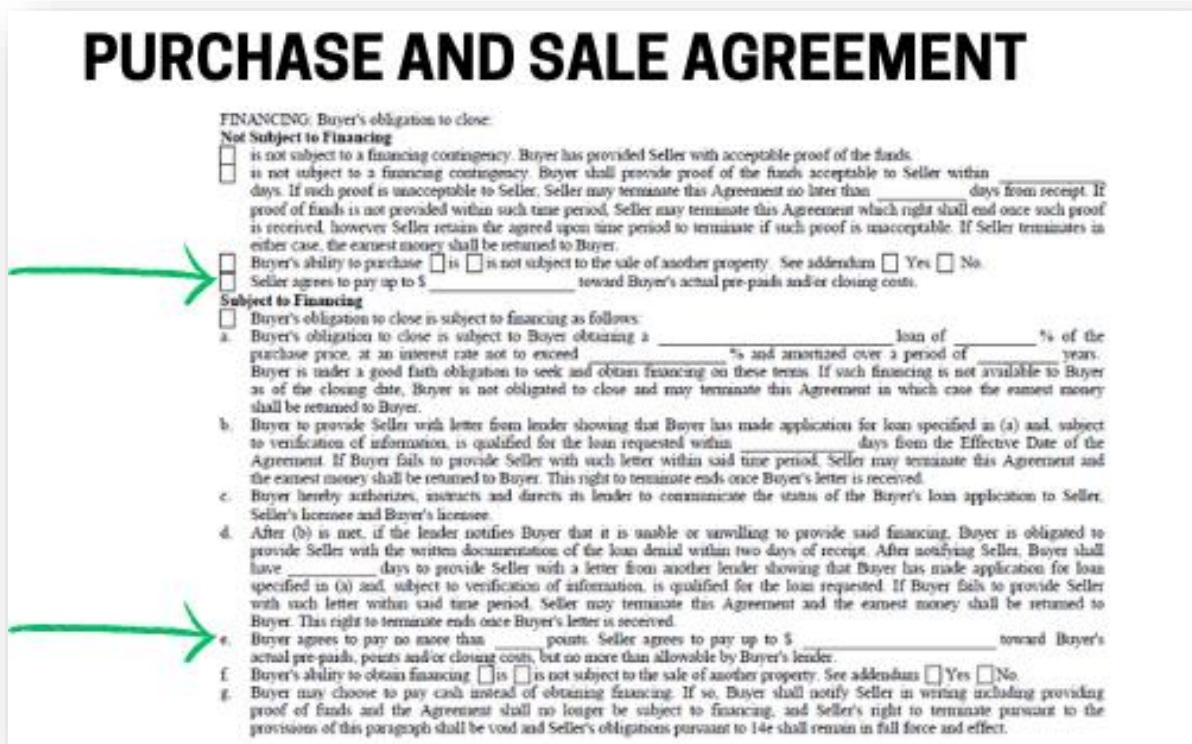
- In this section, buyer concessions would be a seller’s contribution towards buyer’s pre-pays, points and/or closing costs. The buyer would be able to use some or all of these funds towards their buyer agency compensation.
- As the listing agreement indicates, any concessions that the seller offers to buyer is in addition to the listing commission. This would be an additional charge to the seller at closing and is separate from any offer of cooperative compensation by the listing agency.

12. On the listing agreement, is the seller's offer to pay concessions binding in a later Purchase and Sale Agreement?

- No. The NAR Settlement practice changes require that the listing agency must obtain advance seller approval before making any offers of compensation to the buyer side. The purpose of this section in the listing agreement is for the listing agency to get advance approval from the seller to offer or market/advertise concessions towards closing costs which may include buyer agency fees. However, as the listing agreement indicates, the seller may always negotiate and agree to different terms with the buyer via the Purchase and Sale Agreement.

13. What form should be used for concessions towards closing costs?

- Paragraph 14 of the standard residential P&S (see screen shot below) and Paragraph 10 of the Land Only P&S have a checkbox where the seller can agree to pay concessions toward closing costs.



14. Can more than one compensation option be used to pay a buyer agency?

- Yes, a combination of options may be used to satisfy the buyer's financial obligation to pay buyer agency. Agencies should exercise caution in ensuring the appropriate forms are used for each method of compensation.

15. Disclosure of Agency Compensation Policies

DISCLOSURE OF AGENCY COMPENSATION POLICIES

- Yes No This Agency's policy is to compensate all other real estate brokerage agencies in the same manner. If no, Seller acknowledges this policy may limit the participation of other agencies in the marketplace.
- Yes No This Agency's policy on paying commissions to its affiliated licensees is to provide a greater commission for an in-house sale versus sales involving a cooperating real estate brokerage agency.

- The two disclosures under this section have not changed as a result of the NAR Settlement and are specific to agency compensation policy. They are not dependent on whether the seller chooses to offer a direct payment to buyer agency or concessions. **These disclosures are required under the Maine Real Estate Commission Rules and should not be crossed out.**
 - *MREC Rule Chapter 410, Section 6(1)*, states, in part, “If the real estate brokerage agency’s policy is not to compensate all other real estate brokerage agencies in the same manner, this policy must be included in the statement and include a notice to the buyer or seller that this policy may limit the participation of other real estate brokerage agencies in the marketplace.”
 - *MREC Rule Chapter 410, Section 6(2)*, states “When a real estate brokerage agency’s policy on paying commissions to its affiliated licensees provides for an incentive to an affiliated licensee for a greater commission for an in-house sale versus transactions involving a cooperating real estate brokerage agency, this policy must be disclosed in a written brokerage agreement with a buyer or seller.”
- **Note-** Regarding the first disclosure about compensating other agencies in the same manner, if the agency’s policy is to not offer cooperative compensation to any agency, then the agency should select “Yes” because they compensate all agencies in the same manner by offering no compensation