

JUST THE FACTS...

Working with Buyers Before Your MLS Implements Settlement Changes

On July 24, 2024, several new C.A.R. forms, which remove the option for broker to broker compensation, were made available for use in zipForm and other platforms. August 17, 2024 is the deadline for REALTOR®-owned MLSs to make changes required by the NAR settlement (note that some MLSs may implement the changes before the deadline).

If you are currently working with a buyer, keep reading for guidance on how to proceed between July 24, 2024 and the date that your MLS implements the NAR settlement practice changes.

■ **SCENARIO 1:** You are working with a buyer **WITHOUT** a buyer representation agreement.

1. Have a discussion with the buyer about the upcoming changes to the compensation rules. You can use the Broker Compensation Advisory (C.A.R. Form BCA) to help guide you through the discussion.
2. Offers of cooperating broker compensation made via MLS listings may continue to exist for the transition period, and such offers may be accepted without any need for additional documentation.
3. If the MLS listing DOES NOT contain an offer of cooperating broker compensation from the listing broker, then, prior to submitting an offer for the buyer on that property:
 - a. Obtain the buyer's signature on a buyer representation agreement such as the Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC) or the Property Showing and Representation Agreement (C.A.R. Form PSRA); and
 - b. Discuss with the buyer the potential advantages of using the offer to purchase (i.e., paragraph 3G(3) of the Residential Purchase Agreement (C.A.R. Form RPA) plus the Seller Payment to Buyer's Broker (C.A.R. Form SPBB)) to ask the seller to pay for all or part of the buyer's contractual obligation to pay the buyer's broker.

■ **SCENARIO 2:** You are working with a buyer **WITH** a buyer representation agreement

1. Offers of cooperating broker compensation made via MLS listings may continue to exist for the transition period, and such offers may be accepted without any need for additional documentation.
2. If the MLS listing DOES NOT contain an offer of cooperating broker compensation from the listing broker, then, prior to submitting an offer for the buyer on that property:
 - a. If the existing buyer representation agreement provides for minimal or no compensation to the buyer's broker, you can use the Modification of Terms – Buyer Representation (C.A.R. Form MT-BR) to adjust the compensation; and
 - b. Discuss with the buyer the potential advantages of using the offer to purchase (i.e., paragraph 3G(3) of the RPA plus the SPBB) to ask the seller to pay for all or part of the buyer's contractual obligation to pay the buyer's broker.