

JUST THE FACTS...

Working with Buyers After 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). Keep reading for guidance on how to work with buyers, whether they be existing clients or new ones, once your MLS implements the NAR settlement practice changes.

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

1. Since the MLS will no longer contain offers of cooperating broker compensation, you will **IMMEDIATELY** need to 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) prior to showing a property to a buyer or giving a buyer a property tour. This is important to both protect your right to be paid and to comply with the new MLS rules.
2. Prior to submitting an offer for a buyer, 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 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. Have a discussion with the buyer about the 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. At a minimum, **IMMEDIATELY** obtain the buyer's signature to the Disclosure and Modification to Buyer Representation Agreement (C.A.R. Form DM-BR). The DM-BR eliminates the broker's right to obtain compensation in excess of the compensation specified in the buyer representation agreement. Additionally, if the existing buyer representation agreement provides for minimal or no compensation to the buyer's broker, you can also use the Modification of Terms – Buyer Representation (C.A.R. Form MT-BR) to adjust the compensation, **or:**
3. As an alternative to #2, replace the existing buyer representation agreement with a new buyer representation agreement such as the BRBC or the PSRA.
4. Whether #2 or #3 applies, prior to submitting an offer for a buyer, 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 all or part of the buyer's contractual obligation to pay the buyer's broker.

■ **SCENARIO 3:** You start working with a **NEW** buyer.

1. Have a discussion with the buyer about the changes to the compensation rules. You can use the BCA to help guide you through the discussion.
2. Use a buyer representation agreement, which is now required, such as the BRBC or PSRA.
3. Discuss with buyer the potential advantages of using the offer to purchase (paragraph 3G(3) of the RPA plus the SPBB) to ask the seller to pay all or part of the buyer's contractual obligation to pay the buyer's broker.