

BUYER BROKER SERVICE AGREEMENT FAQ'S – July 2024

ENFORCEMENT AND COMPLIANCE

Q: Who will enforce the requirement of having a written agreement before touring a home?

A: MLS will be enforcing the requirement of having a written agreement. If a dispute arises out of the agreement, please seek guidance from your Managing Broker.

Q: What are the consequences if a REALTOR® fails to use the Buyer Broker Service Agreement?

A: MLS is solely responsible for enforcing the requirement of entering into a written agreement with a Buyer prior to touring a residential home for REALTOR® members/MLS participants. If you fail to execute a written agreement with a Buyer prior to touring a home, you may be subject to disciplinary action by the MLS. OREC is not responsible for enforcing any of these practice changes and failure to comply will NOT result in any OREC disciplinary action.

Q: What happens if a Buyer has signed several BBA's with different agents?

A: OREC's form addresses this issue in paragraph 3, by requiring a Buyer to expressly state they are not under a current buyer broker agreement with a different agent. Disputes related to compensation, procuring cause, etc. will continue to be handled in the same manner they are now.

Q: Are non-Residential Brokers required to use the Buyer Broker Service Agreement?

A: No. The Agreement only applies to residential transactions. Accordingly, a written agreement is not required prior to touring a non-residential property.

MLS AND NAR REQUIREMENTS

Q: What are the requirements for MLS participants and NAR members regarding the new agreement?

A: See www.nar.REALTOR®/the-facts for more information as well as your local MLS.

Q: How will the MLS regulate the use of the new BBSA?

A: The MLS will likely regulate this in the same way they regulate violations of their rules today. We recommend attending training with the MLS and watch for guidance from their team as the implementation approaches. OREC is not responsible for enforcing the practice changes agreed to by NAR, MLS, or brokerages.

Q: If sending listings via the MLS to a Buyer, would that require a BBA?

A: No.

Q: How will you enter information into the MLS regarding compensation?

A: You won't. The settlement expressly prohibits offers of compensation on the MLS.

FORM USAGE AND REQUIREMENTS

Q: When and how should the BBA be used?

A: Buyer Broker Service Agreements should be used prior to providing Brokerage services to a Buyer. For REALTORS® and MLS Participants, a “written agreement” is required prior to touring a home with a buyer. For licensees who are not REALTOR® members or MLS participants, you are not required to use a Buyer Broker Service Agreement or written agreement.

Q: Can Brokers use their own forms instead of the provided BBA?

A: Yes. We recommend having your counsel draft any agreement you utilize in your transactions to ensure compliance with all relevant laws and regulations you are subject to.

Q: If the Buyer doesn't submit an offer, do we still submit the Buyer Broker Service Agreement to compliance since we did show them a house?

A: This is a question for your Broker and/or the MLS. Best practice would be to retain all documents signed by clients.

Q: If the commission is being negotiated, is that done on the normal counter offer forms?

A: Commission may be negotiated in many ways. We recommend you use the cooperative compensation supplement form available on our website.

Q: Do we submit this agreement to listing Brokers along with the purchase contract so that the compensation is transparent for all parties?

A: The listing agent is not a party to the agreement you have with your Buyer. Consult with your broker on best practices. In the event you choose to provide such agreement to any third party, we recommend having your Buyer give you permission to do so in writing.

Q: Will the counter offer forms be updated to include changes to this supplement or will it be included in the finance section or contract section?

A: Yes. OREC contract forms committee is working through the library of contracts and forms we provide to update all relevant documents. We will release the updated forms as they are completed.

Q: If there are 2 or more Buyers, can they sign the same Buyer Broker Service Agreement?

A: They can sign the same Buyer Broker Service Agreement or they can sign separate agreement that you combine into one pursuant to paragraph 13 “counterparts”.

Q: Are non-REALTOR®s required to use the Buyer Broker Service Agreement?

A: No. This Buyer Broker Service Agreement is free and optional resource for any licensed real estate professional to use. Non-REALTOR®s and Non-MLS participants are not bound to NAR settlement changes, and therefore, are not bound the new requirement of having a written agreement signed with a Buyer before touring a home. The NAR settlement changes are only applicable to Relators and MLS participants.

Q: Will this be a standard form used across the state?

A: OREC is providing this free and optional form as a standard form that can be used across the state by any real estate licensee. However, licensees are free to use their own forms. MLS is responsible for enforcing this topic.

Q: After the Buyer Broker Service Agreement is terminated or expires, are the Buyer’s Agents required to provide Buyers with a list of all properties that they have shown a Buyer?

A: No. While other states may require Buyer’s Agents to provide buyers with a list of all properties shown to retain the protections listed in paragraph 6 of the Buyer Broker Service Agreement, this is not a requirement. However, Buyer’s Agents may want to keep a record of this information if there are questions after the Buyer Broker Agreement is terminated.

COMPENSATION AND PAYMENT

Q: Will OREC be providing standard clauses to request the Buyer's compensation paid by the Seller or will that be a responsibility of the Broker to seek their own council.

A: OREC published a Cooperative Compensation Supplement to help you negotiate compensation for Buyer's Broker.

Q: After the Buyer Broker Service Agreement is terminated or expires, are Buyers required to pay the agreed-upon compensation if they later purchase a property?

A: Buyers are required to pay the agreed-upon compensation after the BBSA is terminated or expires if the Buyer purchases a home that was previously presented to them by the Buyer's Broker and the purchase agreement was executed within the period identified in paragraph 6 of the form.

Q: Can Sellers still pay a fee to the Buyer's agent?

A: Yes. Sellers can offer compensation to Seller's Broker and Buyer's Broker.

Q: If your office requires a transaction fee or other fees to be paid at close, do these now have to be listed within this form?

A: Yes. All compensation a Buyer's Broker is receiving must be included in the Buyer Broker Service Agreement. As part of the NAR Settlement Agreement, Buyer Brokers must disclose the total amount of compensation they will receive.

Q: Where can commission be offered/marketed?

A: Available marketing options include Yard signs; Property websites; Social Media; Flyers in the property; Personal website; and Emails or MailChimp. However, we recommend talking to your MLS regarding where commission can be offered and marketed. The Settlement Agreement prohibits offers of compensation from being advertised on the MLS, but it does not include additional prohibitions related to such advertising.

Q: How is the payment to a Buyer's agent going to change? Is it possible the Buyer will be paying the Buyer's agent, or is it still going to come from the Seller?

A: If you are using the Buyer Broker Service Agreement provided by OREC, a Buyer will pay a Buyer's agent. However, the form also provides for compensation to a Buyer's agent from a Seller or Listing Agent. Refer to sections 7 and 9 of the form Agreement which outlines the compensation offered to a Broker from the Buyer and/or Seller.

Q: How do we let other agents know what commission our Sellers are willing to pay?

A: The Settlement Agreement only prohibits offers of compensation from being placed on the MLS. You are free to provide this information as your Brokerage sees fit. For example, you can provide this information in emails, over the phone, on your website, etc.

Q: How do we identify the percentage of compensation to be paid to the Buyer's Broker?

A: The percentage of compensation is determined by the Buyer. You should be communicating to Buyers that Sellers and Listing Agents are not required to offer anything (as stated in the BBSA, paragraph 9).

Q: Why is a Buyer's agent not permitted to accept the compensation that the Seller is offering if Paragraph 9 Section B(iii) permits the parties to negotiate a separate written agreement?

A: The settlement agreement expressly states that you are prohibited from providing compensation in the agreement that is not specific, ascertainable, and contained within the document. In other words, you need to have a set number and not a range or non-specific number.

Q: How to handle situations where the Seller offers less compensation than what is agreed upon in the BBSA?

A: This is outlined in Paragraph 9 of the Buyer Broker Service Agreement. For further guidance, please consult with your broker.

Q: Are Buyers responsible for paying the Buyers' agent?

A: Yes. Buyers are responsible for paying Buyer's Broker/Agent. Sellers and Listing Agents are not required to make an offer of compensation. However, if Seller is willing to pay the Buyer's Broker/Agent, they are permitted to do so.

Q: Will there be a way to notify other agents to know if there is any compensation offered to a Buyer Broker? Or will we be fielding a ton of inquiries about if there is compensation or not.

A: Available marketing options include Yard signs; Property websites; Social Media; Flyers in the property; Personal website; and Emails or MailChimp. However, we recommend talking to your MLS regarding where commission can be offered and marketed. The Settlement Agreement prohibits offers of compensation from being advertised on the MLS, but it does not include additional prohibitions related to such advertising.

Q: Is it okay to mention to the Buyer that typically a Seller will pay a commission to a Buyer agent and that this is just in case they don't?

A: We do not recommend telling a consumer/Buyer that the Seller will typically pay due to the changes that expressly provide that a Seller does not have to offer compensation to a Buyer's Broker.

AMENDMENTS AND MODIFICATIONS

Q: Can a Buyer Broker Service Agreement be amended to increase compensation if Seller is offering more than what the Buyer and Broker agreed to in the Buyer Broker Service Agreement?

A: MLS is the sole entity responsible for enforcing practice changes from the NAR Settlement Agreement. Therefore, MLS opinion on this topic is what is binding on you. OREC's opinion is non-binding on this issue. Ask your MLS for a definitive ruling on this topic since they are the entity responsible for interpreting and enforcing these requirements which are NOT state laws or state rules enforced by OREC.

Q: Once a Buyer Broker Service Agreement is signed and agreed upon, can it be amended? For example, can you write an addendum to say your Buyer does not have to pay the other 1% if the Seller is only offering 2% even though your Buyer Broker reads that you will be compensated 3%?

A: Yes.

Q: Once signed by the Buyer, can the Buyer Broker Service Agreement be modified/amended?

A: The Agreement may be amended or modified by further written agreement of the parties. However, we caution amendments that increase compensation as your MLS may take disciplinary action for violation of the practice changes agreed to by your MLS.

CONFLICT RESOLUTION

Q: What happens if a Buyer has signed several BBSAs with different agents?

A: OREC's form addresses this issue in paragraph 3, by requiring a Buyer to expressly state they are not under a current Buyer Broker Service Agreement with a different agent. Disputes related to compensation, procuring cause, etc. will continue to be handled in the same manner they are now.

Q: After the Buyer Broker Service Agreement is terminated or expires, are Buyers required to pay the agreed-upon compensation if they later purchase a property? What if the Buyer has a new agent?

A: Buyers are required to pay the agreed-upon compensation after the agreement is terminated or expires if the Buyer purchases a home that was previously presented to them by the Buyer's Broker and the purchase agreement was executed within the period identified in paragraph 6 of the form. Even if the Buyer obtains a new agent, the Buyer would still owe the compensation if the requirements in paragraph 6 of the form are met.

Q: Who will be going to bat for us in the event the Buyers violate this agreement or choose not to pay their agent at closing?

A: Consult with your Broker.

OPEN HOUSES AND PROPERTY SHOWINGS

Q: If we do a one property BBSA, do we have to create a new BBSA for more properties? Or could we add them on with initials in additional provisions?

A: If you execute a written agreement that is specific and exclusive to one property, you should execute new agreements for additional properties. However, we recommend utilizing a set timeframe instead of a specific address. For example, in the OREC Buyer Broker Service Agreement, you can provide for a short timeframe of 1 day (with a maximum of 12 months). Doing so provides clear dates and allows you to take advantage of the compensation protection language outlined in the OREC form.

Q: Are Buyer Broker Service Agreements needed for showing different types of properties, such as vacant land or commercial properties?

A: No. The requirement for REALTOR® members and MLS participants is for residential properties under 4 units. OREC recommends having a signed agreement prior to providing Brokerage services for a client to prevent any confusion as to the expectations of both parties. This can be accomplished through the Buyer Broker Service Agreement or another written agreement.

Q: Can an Agent not in your office/Brokerage host an open house for another agent in a different Brokerage? Do they have to get the BBSA signed by everyone attending the Open House (since they don't have a listing agreement?)

A: The practice change requiring written agreements with Buyers only applies to MLS Participants “working with” Buyers. Hosting an open house on behalf of a Brokerage, therefore, does not require you to execute Buyer Broker Service Agreements with every attendee at the open house. . However, a Buyer Broker Service Agreement is required if the agent provides the Buyer with Brokerage services.

Q: Do you need to have a Buyer Broker signed prior to showing your own listing?

A: If you are showing a home that you are the Listing Agent on, you do not need to execute a Buyer Broker Service Agreement or other written agreement with the Buyer initially. However, if the Buyer seeks your professional assistance in your capacity as a real estate agent, or you agree to provide Brokerage services to the Buyer, you will then need to execute a Buyer Broker Service Agreement or similar written agreement.

Q: What happens if a Buyer walks in to my open house who has a signed Buyer Broker Service Agreement with another Brokerage? Do they have to leave or can I show them the house?

A: In that scenario, you are fulfilling your duties to the Seller and you are not providing Brokerage services to the Buyer. As a best practice, OREC recommends having Buyers sign in at your open house and if they are working with another agent, giving a courtesy call to their agent to let them know their client stopped by.

Q: Do we need to have an agreement signed prior to showing a property for lease as well?

A: No.

Q: How will anyone know if you have a Buyers Brokerage Agreement prior to showings? Who regulates that?

A: MLS is responsible for regulating these practice changes. Contact your MLS for further information on enforcement.

SPECIAL PROVISIONS AND CUSTOM CLAUSES

Q: How do you include custom clauses in the BBSA?

A: We have provided a space in the Buyer Broker Service Agreement under Paragraph 15. We advise consulting with your Broker and/or counsel for proper usage of the additional provisions.

Q: What are examples of “other options” under 7c?

A: Transaction Fees charged to clients.

Q: How would you word the additional provisions if working with an investor?

A: If there are specific terms your investor client wishes to be added to the Buyer Broker Service Agreement, you may add them into Additional Provisions. The OREC Buyer Broker Service Agreement is an exclusive agreement between the Broker and the Buyer. If the investor does not wish to enter into an exclusive agreement, a different written agreement may be necessary. OREC recommends seeking advice from your Broker and/or counsel.

Q: I charge a transaction fee to clients. Where should I put that?

A: The transaction fee may be listed on the Buyer Broker Service Agreement in Section 7C.

TRAINING AND EDUCATION

Q: What is the best way of explaining the contract to new Buyers?

A: We recommend pointing a consumer to paragraph 2, which clearly states that a written agreement must be signed before you can tour a home. While this can be accomplished by any written agreement, the benefit of the Buyer Broker Service Agreement is that it sets forth critical information up front such as compensation, Buyer eligibility, duration, and provides common sense protections for consumers and licensed real estate professionals both.

Q: What are best practices for training agents on the new forms and NAR/MLS requirements?

A: OREC recommends attending trainings offered by your local and/or state board of REALTORS® along with viewing approved continuing education offerings on our website by going to orec.ok.gov, hovering over the education tab, clicking on “Approved CE Course List”, and typing in “Buyer Broker” into the search bar in the middle of the screen. There, you will find a list of approved CE courses on this topic.

More information can be found at the links below:

OREC resource page: www.oklahoma.gov/orec/resources/nar-settlement-resources

OREC CE course list: www.oklahoma.gov/orec/education/approved-ce-course-list

NAR FAQ’s Resource Page: www.nar.REALTOR®/the-facts

Q: Where can we find how to role-play scenarios for discussing the BBSA with potential Buyers?

A: View approved continuing education offerings on our website by going to orec.ok.gov, hovering over the education tab, clicking on “Approved CE Course List”, and typing in “Buyer Broker” into the search bar in the middle of the screen. Connect with the education providers who are offering courses on this topic and request an outline of what is to be covered.

Q: How do we educate our Buyers on the importance of signing this document without making them feel over-committed?

A: We recommend telling a Buyer that it is a requirement for any REALTOR® or MLS Participant to execute a written agreement with a Buyer prior to touring a home and that such change is a uniform requirement. We further recommend that you outline the benefits to a consumer of signing this Agreement (transparency with key terms: compensation, duration, termination, Buyer eligibility, etc.). Lastly, we recommend going over the form with Buyers to help them understand that compensation is negotiable and the duration can be limited to one day or something less committal.

UPDATES AND FUTURE CHANGES

Q: Will the Listing Agent Agreement also be updated?

A: Yes, an updated version of the Listing Agent Agreement will be made available on the OREC website.

Q: Will the OREC update other forms?

A: Yes. OREC will publish an updated version of the Cooperative Compensation Supplement, the Listing Agent Agreement, and the Residential Sales Contract on its website.

Q: When will this new form be uploaded in Transaction Desk/Zipforms?

A: Check with your local MLS.

Q: Do you have a target date for new OREC listing agreements to be published?

A: End of July 2024

MISC

Q: Is retainer fee required to go into a Trust Account?

A: Per OREC rules, Brokers are required to deposit funds belonging to others in a Trust Account. See OAC 605:10-13-1(d). In addition, the OREC code specifically makes it's a violation for licensees to commingle their funds with the property or funds of others unless it is in a Trust Account. Here, because the retainer is non-refundable and the Broker gets the funds no matter what, the retainer amount is not considered funds belonging to others. It is recommended that the Broker keep track of these funds since the retainer amount reduces the compensation owed to them at closing. The Broker should also explain that this amount is non-refundable.

Q: Will this new agreement be tested for on the current Brokers exam with Pearson Vue?

A: No. These are not state laws or state rules enforced by OREC. Any changes to the Broker exam will be communicated before they are implemented.

Q: Can a Buyer include their agent's commission in their mortgage loan?

A: We recommend that a Buyer speak with their lender about this.