



Buyer/Seller Tool Kit

A guide created for Five Star agents to assist in navigating the industry post NAR's Commissions Settlement Case.

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The Lawsuit Summarized

A Sitzer/Burnett lawsuit determined the traditional broker commission structures as anti-competitive, arguing that such practices unfairly inflated costs for sellers and did not allow buyers to negotiate commissions for real estate services. This challenge brought forth significant scrutiny towards NAR and several key brokerages, culminating in a unanimous jury decision against NAR. [\[NAR's Settlement Summary\]](#)

The result was a Settlement Agreement that required industry wide changes that every Realtor in the nation must abide by as of August 17, 2024.

Industry Changes

Change 1: Prohibits Compensation Offers on the MLS

A pivotal adjustment taking effect in mid-August 2024 is the prohibition of compensation offers to buyer's agents via MLS. Compensation can still be negotiated; however, these discussions will transition off-MLS marketing. Sellers *can* offer concessions on the MLS, but agents cannot stipulate that the concession is for a buyer's agent commission. The lending guidelines and laws are adapting as well. The Lender has access to any concession offer too, so use the term Commission for compensation.

Change 2: Off-MLS Negotiation of Cooperative Compensation

The settlement upholds the possibility for cooperative compensation, (Co-op Broker-to-Broker fees) but requires that it's pursued through direct negotiation and consultation off-MLS and any format connected to the MLS, or IDX's, except Brokerage sites.

Change 3: Mandatory Written Representation Agreements

Starting mid-August 2024, any MLS participant working with buyers must secure written agreements before the first home tour. This change underscores our commitment to transparency, ensuring buyers are fully aware of the services, value, and compensation structure upfront. Compliance with this law can be met with either a Property Showing Agreement or Buyer Agency Agreement.

Change 4: Contracts Must Disclose that Commissions are not set by Law and are Fully Negotiable Between the Brokerage Firm and both the Sellers and Buyers.

How Does This Impact Buyers Agents?

When working with buyers & discussing buyer commissions, it's essential to have clarity and structure. Here's a streamlined approach to address buyer commission inquiries effectively:

1. Before Showing a Property, ensure you have either a Property Showing Agreement or signed Buyer Representation Agreement.

This agreement must specify:

1. The compensation you'll receive, detailed either as a fixed amount or a set rate.
2. A clear statement that broker commissions are not fixed by law and are open to negotiation.
3. A provision stating you cannot accept compensation beyond what's agreed in the buyer representation agreement.

Note: In a meeting on 3/22/24, NAR stated that they specifically referred to this as a "representation agreement" and intentionally avoided using the word agency. The spirit of this was to make sure that buyers are informed up front how compensation works, and that this is negotiable.

2. Discussing Payment for Services as Commission

Clearly explain the payment process for your services. Highlight that while you can attempt to negotiate a seller-paid commission on the purchase agreement or from a co-op listing brokerage fee for the buyer agent compensation, success is not guaranteed. If a seller-paid commission cannot be secured, inform the buyer that your commission will be added to their closing costs and paid to you at closing

3. Discussing Payment of Services as Seller Concessions

Seller Concessions are allowed to be advertised on the MLS. However, these types of concessions have been used to assist the buyer for payment of Lending Costs. Concessions cannot be earmarked for Buyer Agency fees on the Listing Contract, or MLS. If concessions are negotiated on a purchase agreement, be aware that the concession can be used by the lender to assist the buyer. Lenders are addressing their guidelines for using concessions to pay for third party fees, like a buyer agency commission.

4. Special Considerations for VA Loans

Acknowledge that while FHA and USDA loans generally align with these practices, VA loan requirements may differ and are currently under review for compliance with these guidelines.

Listing Agent Dialogue Scenarios

Scenario:

Imagine you're sitting with your clients discussing their upcoming listing, and they ask: "I've been hearing a lot about changes in real estate rules. Do we really need to offer commissions to the buyer's agent when we sell the house? Why can't the buyer just pay their agent themselves?"

Response:

I understand your concerns, especially with all the recent chatter about changes in real estate transactions. Here's the scoop: all forms of compensation between agents and their clients are negotiable and we can no longer put it on the MLS. Truthfully, they've always been negotiable. Even the President got it wrong on stage the other day. But let's get to the point: should we pay a buyer's agent commission, or should you try to pass the buck to the buyer? Let's talk about it. If I were selling a family member's house, I would recommend offering a buyer's agent commission.

Here are a few reasons why:

1. Buyers' Cash Constraints

Buyers need to come up with a lot of cash to purchase a home, including down payment, lender closing costs, title insurance, and state/local fees. Adding a buyer's agent fee on top of that can exclude really good buyers who fall short of the cash demands.

2. Competitive Offers

Most buyers (over 80%) hire an agent to guide them through the process. A good buyer's agent helps buyers make competitive offers, understand market dynamics, and navigate multiple offer situations. Without this guidance, buyers might not know how to write offers that will get to closing.

3. Quality Offers

A quality offer from a buyer represented by a quality buyer's agent is more likely to get to the closing table. We want to avoid weaker buyers and flaky behavior, which can lead to the house being "back on the market."

Here's my strategy:

Let's offer a buyer agent commission by listing your house for X amount and adding __% to the price. This strategy effectively wraps the costs into the purchase price and mortgage amount. It's the best way to ensure we get the most money out of the buyer and a solid, well-written offer we can feel good about accepting.

Listing Agent FAQs

Q1: How do commissions work now?

A: Commissions have always been negotiable. Now, seller's agents and buyer's agents must discuss commissions upfront. Sellers can choose to offer compensation to just their listing agent or to both their listing agent and a buyer's agent. Buyers also need to discuss and agree on a commission with their agent. If a seller doesn't offer compensation to a buyer's agent, the buyer can negotiate it in the purchase agreement, pay out of pocket, or include it in the price or financing.

Q2: Do I have to offer a buyer's agent a commission?

A: No, you don't have to offer anything, but your seller may want to. We're here to advise and counsel our clients. If the decision is made not to offer buyer's agent compensation, we need to be prepared for offers that include this in the purchase agreement, as many buyers will try to have the commission covered in their offer or financed through a seller concession.

Q3: Can I offer them a lower commission than you?

A: Yes, you can offer any amount to a buyer's agent. However, buyers might still ask you to pay a specific amount in the offer. If we offer less than what the buyer has agreed to pay their agent, they might ask you to cover the difference or the entire amount.

Q4: What will happen if I don't offer a buyer commission?

A: It's one of your options, but offering a buyer's agent commission is often the best strategy to get your house sold. Some buyers may not be able to afford their agent's commission on top of their other costs and might negotiate for you to cover it in the purchase offer. If we don't offer a buyer's agent commission or a way for the buyer to cover it, they might not view the house or consider making an offer. To attract more interest, it's usually better to provide options that help buyers meet their obligations. We can review a Net Sheet to understand the potential price and profit we could achieve.

Q5: Will agents still show the house?

A: Yes. However, some buyers might have contracts excluding houses without buyer's agent commissions, or they are going to ask for help paying a commission in an offer.

Q6: Can't you just show the house and sell it yourself?

A: Yes, I would love to do that, and will try to sell it myself. Let's talk about if a buyer who is not working with a buyer's agent will want to write an offer...please understand my primary loyalty is to you, and most buyers will know this, but I can certainly help them in many ways without compromising my loyalties to you.

Buyer Agents FAQs

Q1: Do I have to sign something to see the house with you?

A: Yes. We need to sign a Disclosure of Agency Relationship and either a simple Property Showing Agreement or a full Buyer Agency Contract before I show you a property. It's best to have a pre-meeting to discuss these details and have a plan.

Q2: How much and how do you get paid exactly?

A: This is something we negotiate. Our meeting and the Buyer Agency Contract will detail my services and payment options. Generally, I get paid ___ % of the sales price plus a \$___ broker admin fee.

Here are the main ways:

1. You may pay 'out of pocket' when you close, or it will be a fee on the Closing Settlement Statement.
2. We ask the sellers in the offer to pay me when you close.
3. We work with your lender to wrap it into the loan.

Q3: Will you still show me a house if I can't pay you that much & you can't get paid from the seller?

A: We can discuss other options like a per showing fee, a retainer fee, an hourly fee, or a payment plan. Let's start by showing you a couple of houses and then discuss a formal arrangement.

Q4: What if I find a house on my own, or can I use other agents to show me houses?

A: Finding a house off-market is something we can address in the buyer agency contract. As for using other agents, it might conflict with our exclusive agreement and hurt your chances of getting a house. Let's work together exclusively to maximize your chances.

Things to Avoid Saying:

- "It's all confusing. Let's just do it the way it has always been done."
- "If you don't offer a commission then your home will never sell."
- "Let's just work together for a while, and we'll work out the paperwork when we find a house."
- "Let's just use the 'going rate' or 'standard rate.'"
- "I will work for free and just take whatever the sellers pay me."
- "I can save you money if I work as a dual agent."

Bonus: More Objection Handling Ideas & Dialogue Scenarios

As you navigate your conversations, you'll inevitably encounter a variety of objections. It's part of the job, and we're here to guide you.

Remember, the key isn't just in the content of your response, but in your delivery. If you come across as too defensive, it might seem like you're only looking out for your interests. Clients seek understanding—they want to know that their concerns are acknowledged and that you're there to provide them with clear, beneficial options.

Here's a balanced five-step approach for tackling objections that combines professionalism with a personal touch:

1. **Acknowledge Their Concerns:** Start by validating their feelings with a simple acknowledgment. "I see where you're coming from", can go a long way.
2. **Clarify What They Mean:** Make sure you're on the same page by asking clarifying questions. It's a "Just to make sure I understand, are you saying...?" kind of moment.
3. **Introduce a Solution:** Engage them with possibilities by proposing, "If there's a way to address this concern that works for you, would you be interested?"
4. **Outline Options and Outcomes:** Present the different paths available and what each could mean for them. This is where you lay out the pros and cons clearly.
5. **Move Towards Agreement:** Aim to close the loop with a suggestion to proceed based on their comfort, "Does this sound like a plan you'd feel good about?"

Stay confident, stay empathetic, and remember: every objection is an opportunity to deepen your client relationships and guide them towards the best decisions.

Seller Objections

Seller Objection 1: Clarifying the Economics of Home Sales

Seller: "Why does the sales price need to include the buyer's agent commission? Can't they pay their own Realtor?"

- **Response 1:** "Does a car dealer ask buyers to pay a commission to buy a car? No, it is part of the cost of marketing for the brand and the dealership. Paying a buyer's agency commission is simply providing incentive for an agent who is representing a buyer to show and sell your home.
- But to answer your second question: Maybe. Some buyers may be able to pay their buyer's agent; others will not. And nobody is requiring you to pay them. The question

you have to answer for yourself is: Do I believe that providing incentive to show and sell my home is worth the price?"

- **Response 2:** "The total sale price is designed to cover all aspects of the transaction, ensuring a seamless process for both parties. This includes not just the commission, but also title insurance, state transfer taxes, and other fees. It's important to remember that buyers often have limited cash available for upfront costs and prefer to finance as much as they can through their mortgage. Essentially, when they pay the sale price, they're covering these costs and, indirectly, their agent's commission, enabling a smoother transaction by incorporating it into their mortgage payments."

Seller Objection 2: Addressing the Commission Misconception

Seller: "I think I'd rather not pay a buyer's agent and save 3%."

- **Response 1:** "Will you be saving 3% or losing more than that because you don't have competition from buyers who are working with agents who have the incentive to show your house and sell it? It's your call but, historically, offering incentive to buyer's agents has resulted in getting some pretty healthy home prices. Who is going to be doing the work of the buyer's agent... you?"
- **Response 2:** "Which is more important to you: The commission you pay or how much money you walk away from the closing table with?"
- **Response 3:** "Saving on commission might seem beneficial at first glance, yet the expertise of a professional buyer's agent often more than compensates for this cost. These agents assist their clients in making competitive offers and navigating through the complexities of the buying process, effectively guiding them to present their best possible offer. By choosing not to offer a commission to the buyer's agent, you might inadvertently limit your property's appeal to a significant portion of the market, potentially missing out on receiving the best possible offers. In essence, the commission can be viewed as an investment in attracting serious, well-represented buyers who are prepared to make strong offers."

Seller Objection 3: Isn't a Buyer's Agent negotiating against me?

Seller: "Why should I pay for a buyer's agent who will negotiate against me?"

- **Response 1:** "A buyer's agent can only negotiate against you to the extent we – you and I – allow them to. If they come in low, we can counter."

- **Response 2:** It depends on how you look at it. Even though you are offering an incentive for them to sell your home, they're bringing their buyer to your home. They're getting paid by you but they're not always working against you
- **Response 3:** "It might seem counterintuitive to pay someone who appears to be working against your interests. However, a proficient buyer's agent is actually instrumental in facilitating a successful sale. They ensure that only serious, financially qualified buyers come forward, which can often lead to a higher final sale price. Their negotiation skills, honed by understanding the buyer's constraints and desires, can indeed work to your advantage. Most buyers are already stretching their budgets to cover down payments and closing costs, not to mention immediate post-purchase expenses like home improvements. By offering buyer agency compensation, we're actually widening the pool of potential buyers for your home, which can lead to better offers. Think of it as an investment that enhances the appeal and competitive environment of your property, rather than an expense."
- **Response 4:** As a buyer's agent, myself, I have built enormous amounts of trust with my clients. I understand their needs, their limits - and, together, we have brought extremely strong offers to sellers. I believe that my relationship with these buyers has helped them get over their fears or reservations about writing such strong offers. It's my opinion that these buyer agent / client relationships can actually work in your favor to bring highly competitive and creative offers.

Seller Objection 4: Aren't you supposed to show and sell my house?

Seller: "Isn't your job just to show my house to buyers and then sell it to them?"

- **Response 1:** "My job is to get maximum exposure of your home to buyers and agents they trust so that we generate competition for your home. The more buyers – the higher the demand, that is – the higher the price you're going to get. My job is to make sure everyone knows that your house is available."
- **Response 2:** "While showing your house and securing a sale are key aspects of my job, my role encompasses much more to ensure we achieve the best possible outcome for your sale. It's true that in some cases, around one in ten, I might directly connect with a buyer. However, the majority of successful sales are the result of casting the widest net possible to attract the right buyer. This often means collaborating with buyers' agents who bring qualified, interested parties to the table. My objective is to maximize your return by finding a buyer who sees the full value of your home and is willing to pay top dollar for it. Engaging with buyers' agents is a strategic part of reaching that goal and ensuring your home sells not just quickly, but for the best price."

Seller Objection 5: Why would I hire you to sell my house vs. putting it on Zillow myself?

Seller: "What's the difference between listing on Zillow and using your services?"

- **Response 1:** "On Zillow, your home will be posted for sale and when buyers inquire, they are directed to whatever agent pays money for leads in that zip code. Buyers will not reach me, the listing agent, who knows your home better than anyone other than your family. They will land in the hand of a buyer's agent whose sole allegiance is to that buyer. They may be told incorrect information about your home's features and value. And there will be nobody there to correct them."
- **Response 2:** "Listing on Zillow shows just the tip of the iceberg, the visible part of selling your home. What lies beneath, the unseen bulk, involves much more—accurate market analysis, professional staging, strategic marketing beyond Zillow, and crucially, navigating the complexities post-interest. This includes negotiating to avoid costly concessions, vetting buyers thoroughly, and ensuring no detail derails the sale. My role is to guide you through these hidden depths, ensuring a smooth, successful sale. It's about maximizing value and minimizing stress, far beyond what a simple listing can achieve."

Seller Objection 6: Buyers are responsible for their agents, not me.

Seller: "Shouldn't buyers be responsible for their agent's commission?"

- **Response 1:** *(See Objection #1)* Sure, in theory, that sounds fair. But tell me how that reality looks? Buyers are scraping up every loose nickel for a down payment. They don't have extra cash to pay a buyer's agent. This has been the "buyer dynamic" for decades. Let's pretend for a moment that buyers had to always pay for their commission and only 5% of all buyers had the ability to do so. What would happen when there is no longer any demand for homes because buyers can't afford to pay an agent to help them? The housing market would crash in a way that would make 2008 look like a day at Disney World.
- **Response 2:** "Given the current market dynamics, while it may seem buyers should cover their agent's commission, savvy sellers often adjust the sales price to implicitly include this expense, ensuring their property appeals to the widest audience without explicitly sharing costs. Buyers already face significant upfront expenses, including closing costs and down payments, which on a \$400K home can amount to \$32K-\$60K before commission is even considered. By effectively incorporating the buyer's agent commission into the sales price, we remove a financial barrier for buyers. This

approach doesn't just make your property more accessible; it positions the final sales price to reflect the true bottom line, facilitating a smoother, more appealing transaction for both parties and potentially expediting the sale at a price that benefits you."

Seller Objection 7: I don't need to entice agents; my property sells itself.

Seller: "My property can sell itself; I don't need to entice agents."

- **Response:** "While your property's appeal is undeniable, maximizing exposure through professional agents ensures it reaches the most serious, pre-qualified buyers. These buyers & agents recognize the reality of the market and are here to try to present the best offers possible to sellers. This creates a highly competitive environment & drives buyers and their agents to write the strongest offers possible, based on experience and trust in one another. Buyers today are savvy and typically come with representation; if we don't offer to compensate their agent, they're likely to factor that into their offer, essentially reducing the perceived value of your property. Incorporating the commission into the sales price allows us to attract top buyers without directly impacting your bottom line. Essentially, it's about making strategic moves to ensure your property doesn't just sell, but sells for its utmost value."

Seller Objection 8: There's no guarantee paying a commission will get me a higher price.

Seller: "Paying a commission doesn't guarantee a higher sale price, right?"

- **Response 1:** "No, it doesn't. When you pay an attorney to represent you, there's no guarantee you'll win, is there? Nor when you pay a doctor to remove your spleen. In fact, they have you sign an acknowledgment that you understand they cannot guarantee you will live. The best anyone can do is to provide guidance based on their knowledge and experience. It's up to you whether you're going to trust them and follow their guidance or not."
- **Response 2:** "True, there are no absolute guarantees in real estate. However, evidence suggests that properties accessible to buyer's agents tend to attract more competitive offers, often resulting in a higher sale price. By engaging buyer's agents, we tap into a motivated network eager to present strong, creative offers to ensure their clients secure the home, often outpacing those from unrepresented buyers."

Unrepresented buyers may not only be more cautious but also lack the negotiation skills and market knowledge that seasoned agents bring to the table. Ultimately, this strategy enhances the likelihood of better sale conditions and outcomes for you."

Seller Objection 9: I'd rather lower the price than pay an agent.

Seller: "I think lowering the price could attract more buyers than paying an agent."

- **Response 1:** "Maybe. It depends on what you think your home is worth. If you price your home, let's say, 3% under what you believe the market value to be, and you get a full price offer, you will have saved the commission you would have paid a buyer's agent... and now you get to do all the work they would have done for you. What happens though if you don't get a full price offer on your discount-priced home? You'll have to lower the price until it sells but you'll never have the maximum competition from buyers that you would have had if you had offered concessions to cover the buyer's agent commission. A NAR study from 2023 determined that 89% of buyers used a buyer's agent (<https://www.nar.realtor/research-and-statistics/quick-real-estate-statistics>). You will have effectively eliminated a large pool of your potential buyers. Does that make sense?"
- **Response 2:** "While a lower price might initially seem more attractive, it often doesn't offer the clear advantage you might expect. Buyers, especially those working with agents, are informed and understand market dynamics. If they see you're not compensating their agent, they're likely to factor this into their offers, effectively diminishing the savings you hoped to achieve by not paying a commission. This strategy could inadvertently reduce your net proceeds rather than enhance them. A well-represented sale, on the other hand, attracts serious offers that reflect the true value of your home, ensuring you don't leave money on the table."

Buyer Objections

Buyer Objection 1: Gaining an Edge in a Seller's Market with Your Buyer's Agent

Buyer: "With houses selling so fast and bidding wars, how do you make a difference for me as my agent?"

- **Response:** "Every market is unique. But, you're right - in many markets today, it's a seller's market and properties seemingly sell very quickly. This is not always the case, though. We

are seeing increases in price reductions & homes sitting on the market longer. It always comes down to a refined pricing and marketing strategy. My job is to ensure you're ready to jump on the right home as soon as it hits the market. But it's not all about speed; it's also about making your offer stand out. Beyond offering a good price, we look at what else we can bring to the table that matters to the seller, like flexible move-out dates or simpler terms. My main goal is to keep your interests front and center, helping you put forward a strong offer that's competitive but doesn't stretch you too thin. While the seller's agent is looking to get the best deal for their client, I'm here exclusively for you, to ensure you don't just win the bidding war but do so on terms that make sense for you."

Buyer Objection 2: Direct Dealings with Listing Agents

Buyer: "Can't I just deal directly with the listing agent and negotiate a better deal since they won't have to split the commission?"

- **Response:** "It's a common misconception that dealing directly leads to better deals. Listing agents are bound to get the best deal for the seller, not for you. My role is to level the playing field. I bring to the table sharp negotiation tactics focused on securing you the best price and favorable terms, drawing from a deep understanding of the current market. By representing you exclusively, I ensure that your offer is competitive without compromising your interests. The market favors informed, strategic offers, and that's what I specialize in crafting for you."

Buyer Objection 3: Agent Commission

Buyer: "The seller's offering 3% commission. Could you take less, like 1.5%, so I can save on costs?"

- **No or Yes, it's up to you.** When a buyer suggests reducing your commission, remember, it's more than just a negotiation over percentages—it's a conversation about the value you bring to their home buying journey. Your commission isn't just for writing offers; it reflects the comprehensive service and expertise you provide. It will ultimately be your business decision and the task is for you to explain your value, time, service, and expertise. Consider these topics before you compromise or cave in to this objection. It's a negotiation.
 - **Expertise and Market Insight:** Beyond the visible efforts, there's extensive market research, continuous learning, and strategic planning—all aimed at their benefit.
 - **Operational Costs and Business Investment:** The commission underwrites various operational costs, from marketing to education, enabling you to offer top-tier service.

- **Dedication and Full-time Commitment:** Representing them means being all in—scanning the market early, negotiating late into the night, and always strategizing for their best outcome. This dedication is about more than being available; it's about being fully invested in their success.
- **Financial and Risk Mitigation:** Your role also involves identifying and navigating potential pitfalls—mistakes that could cost far more than the commission. From inspections to technical nuances, You are there to safeguard their interests, ensuring a secure and smooth transaction.
- **Emotional and Practical Support:** Buying a home is a significant emotional journey. You provide support, advice, and solutions throughout, reducing stress and making the process as seamless as possible.
- **Strategic Partnerships:** Your network of trusted professionals, from lenders to contractors, is at their disposal, streamlining every step of the process.

Dialogue Scenarios

Seller Conversations: The Case for Sellers to Incentivize Buyer Agents

Dialogue 1:

There are 2 sides or 2 jobs in every transaction - Seller side and Buyer side. As your listing agent, you are hiring me to do many things, but the end result is to get a buyer to write the highest amount for your house with reasonable and acceptable contingencies. The other part of the end result is to get an offer that is strong from a financial position, and you want that offer to have maybe, an escalation clause, seller friendly contingencies, an appraisal gap factor or to get them to access more cash...so a strong offer that will close.

The last thing you want is an offer on a napkin, or just some “tire kicker” offer that is weak and really puts the deal at risk of not closing. The best way to get one or probably more solid offers that have more certainty to close is to pay or incentivize a professional Buyer’s Agent.

Buyer’s Agents who have the opportunity to get paid will work with serious and well qualified buyers. If they are not getting paid or are just doing it for bare minimum fees, they will give bare minimum efforts. You get what you pay for. And what you are paying for is the tool to get solid offers to consider. So, let’s not limit your opportunity to get the best and strongest offer.

Now I could do all of this on my own and do both jobs for ___% but number one, I can’t work with and vet the hundreds of potential buyers out there. Number 2, Buyer’s may not trust me...they think I will be only looking out for you...and they’re right. So, I will share my full commission of ___% and give ½ to a buyer’s agent because I know they will vet their buyers and will write the strongest offer for you to consider. We can look at the Net Sheet, and I’ll show you how this is detailed out.

Dialogue 2:

I believe in my core, from years of experience in this industry, that a seller offering buyer's agent compensation will yield better results for the seller. Both financially by bringing the best buyers and offers to the table, as well as the best chances of actually making it to the closing table. For starters, buyers have to come up with way more cash than most people realize to purchase a home. From a significant down payment, lender closing costs, buyer side title insurance costs, state and local fees - and now, they potentially may have to come up with a buyer's agent fee on top of that. It most certainly will knock out really good buyers who fall short of the cash demands placed on them. I think a solid strategy is to build your price considering the "x" % buyer's agent fee - let's pass the costs on, bake into the price. Why not offer them a path to swing for the fences?

Here is the second reason to offer a buyer's agent commission. And I've seen this over and over - on both sides of the negotiating table. Buyers, on their own, do not know how to write a truly competitive offer that will actually get to the closing table. It's not that they're dumb, but they don't do this every day. Most of the time they buy or sell a home just once a decade. It's extremely infrequent and intimidating for most. If they like your home, but can't afford representation, we're going to have a hard time getting them to bring their best offer to the table. Buyers rely heavily on the trust they have developed with their buyer's agent. A good buyer's agent is able to help a buyer bring an offer that is well beyond their comfort zone, necessary to win the home. And ONLY a buyer's agent can coach them through this. ONLY a buyer's agent can earn their trust and get them to write the most competitive offer for you to consider. They cannot do this without an agent. They just don't know what to do. And, they certainly won't take my advice considering my #1 goal is to protect you, and to maximize your sale. Not offering compensation, in my professional opinion and in most cases, is not in your best interest. We want as many buyer's agents and their clients writing their best offers - ratcheting things up as high as possible for you... strong buyer's agent + competing offers + you in the driver's seat = max price. Lastly, a quality offer from a buyer represented by a quality buyer's agent actually gets to the closing more often. We want to avoid weaker buyers, flaky behavior and ultimately - ending up with your home "back on the market." That's my pitch. My advice is to add the buyer's commission on top of our target price and let the buyer's agent do their thing. We are leveraging the buyer's agent to get the most money out of the buyer, the most for your house, and a solid well written offer we can feel good about accepting.

Buyer Conversations: The Case for Paying a Buyer's Agent

Dialogue 1:

Let's do this: the new law says that I have to have you sign a property showing agreement in order to even show you a house. I will do this a couple times for free, and then let's see if we are a good fit, meaning you want to work with me and I want to work with you.

Then we can discuss whether you want my help buying a house in this competitive market. Prices are going up, and sometimes you have to compete or write really clever and good offers to win a house. I can be very valuable and increase your chances in this market with offer writing. The seller has someone working for the seller's interest so why shouldn't you? In order to do that we have to agree to sign a buyer agency agreement.

Dialogue 2:

The first thing to agree on is the Property Showing Agreement fee and/or the Buyer Agency Contract terms and commission. My commission for all my expertise and all the ways I'm going to help you is ____% of the sales price, plus there is a small Broker Administration Fee of \$_____

Now there are 3 main ways to get this paid:

- The first way is that you pay Five Star Real Estate directly out of your pocket. We can do this in a lump sum at the closing, or we could set up a retainer fee or an hourly fee pay as you go type of plan.
- The second way is that we can ask the seller to pay for it on a purchase agreement, or check with the listing brokerage and ask if they are sharing a commission with a buyer broker.
- The third way is that we can ask the seller to pay for a concession, and we can wrap it into the loan, if the lender will allow that.

An important caveat to the 2nd and 3rd options are that before we see a house, I will need to verify that the seller or listing brokerage is offering to pay a commission. If so, let's go see it. If they are not even up to negotiating this type of offer term, then we have to have a discussion about whether we even want to see it or about how you can pay for my buyer's agent services. I do think this will be a rarity, but it's a good conversation to have up front and decide how we would like to proceed.

Even More FAQ's From Fellow Agents

Q1: The NAR Letter of the Law stated that a commission paid to a Buyer's Broker cannot exceed the agreed upon commission written into the Buyer Agency Agreement, and that the Buyer Agreement must be signed prior to showing any houses. Can you address this?

A1: Correct. Once you sign a Buyer Agency Agreement and indicate on the form how much commission your buyer will pay you, you cannot accept more than this amount. Therefore, agents may want to have a higher percentage or amount indicated on the buyer agency form. Then the buyer's agent can decide to accept less than the agreed upon negotiated commission or charge the remainder portion to the buyer.

Q2: Isn't broker reciprocity (commission sharing) one of the main points of having an MLS?

A2: The MLS was traditionally set up to show commission offerings to a buyer. Since the NAR ruling doesn't allow this starting August 2024, no mention of compensation from a seller to a buyer's agent can be offered on the MLS. The seller can continue to offer commission, but, going forward, you will need to have a buyer agency contact with your clients stating how much you will be paid. If you discover a seller is not offering compensation, you can ask for a commission within an offer.

Q3: How are they going to regulate if the buyer's agency was signed prior to a showing?

A3: We believe that if you are audited by LARA, and are shown to be missing them, then potential fines and penalties may be assessed, up to loss of your license. We do not know for certain, though.

Q4: What if the potential buyer does not want representation at all - how do they see a house?

A4: An unrepresented buyer could contact the listing agent. The listing agent can show the home, and best practice would be to disclose up front that you represent the seller. We can also offer our services as a listing agent and offer to write up a Purchase Agreement on their behalf. The buyer should sign an agency disclosure stating they are aware that you represent the seller. Our loyalty would remain with the seller.

Q5: How would that affect an open house situation?

A5: You can hold open houses without needing any representation agreements signed with buyers coming to the home. If you are not the listing agent of the home and you intend to try to represent one of these visitors as a buyer, then you should immediately have a representation agreement signed. Per NAR, if you do not intend to represent them or bill them for services, then no representation agreement is needed. Perhaps a required sign in sheet that can function as a Property Showing Form may be a solution.

Q6: So a buyer calls me as a listing agent. I am working for the Seller, so I can't put them under buyer agency. Do I just have them sign an agency disclosure that I am working as a seller? Or just tell a buyer I represent the seller, and I can't show them?

A6: Yes, you should show them the home. Showing a home for a potential buyer can and always has been part of the job for a listing agent, since it's helping the seller to sell the property. Disclose that you represent the seller by having them sign an agency disclosure stating that they understand you are representing the seller. From there you could also offer to write up a purchase agreement on their behalf with exactly what terms they want and present it to the seller for consideration.

Q7: I'm curious since buyer agency agreements are standard for Michigan or at least West Michigan, will that mean brokerages here are still being included for the payout in the settlement?

A7: NAR viewed this as impacting their entire membership.

Q8: Am I able to charge a retainer type fee or per showing charge with my buyers, and how would that look with Five Star? Collect directly from the consumer and bill them?

A8: The buyer agency agreement allows agents to charge per hour, a retainer fee, flat fee, or % of commission. If an agent is charging by the hour, we would recommend a retainer fee be collected and held with Five Star Real Estate. Once you bill out your hours, the client will need to sign off and approve. Then FSRE could pay you the fees. We are still working on how this should best be handled.

Q9: The lending industry will also be needing significant change. For example, a VA or RD Buyer cannot pay their buyer agent commission. Have you heard any talk of lending changes?

A9: This is true. NAR stated they are actively communicating with these entities to find solutions.

Q10: I would assume the Buying Agent Commission will become a "negotiation" piece with the Buyer, and in some cases between the Seller and Buyer?

A10: Correct – All commissions between a buyer and buyer agent will be negotiated. We recommend that you draft in the offer that the seller pays a buyer commission to satisfy the buyer's contractual agreement with the buyer's broker.

Q11: Where can commissions be offered? Showingtime? Signs? Website? Documents in the MLS? Public remarks? Agent only Remarks?

A11: Commissions can be offered anywhere except on the MLS or any place that gets a direct feed from the MLS. One exception is the brokerage's website: this is allowed. You can still offer concessions to the buyer via the MLS, but cannot reference such concessions be used for a commission payment or to pay the buyer's agent.

Q12: If we start charging the buyer a per hour fee, will Five Star be billing for that?

A12: Hourly fee payments would still need to be collected by Five Star and then paid to the agent. This is an occupational code requirement. The agent would be required to have proper recording of hours and invoices to their client and an agreement in place stating how and when such payments would be made to Five Star according to your split agreement.

Q13: I had a buyer write an offer with us on our listing, and he pointed his finger at me and said "You are negotiating your buyer's side commission, correct?"

A13: Buyer's agents are now required to negotiate commission directly with their client. A buyer can still try to negotiate with a seller to pay a buyer commission directly or a seller concession towards buyer's lender closing costs and/or 3rd party fees. (Buyer Agency Commission)

Q14: Could we have these conversations at the home? Or does it need to be signed prior to opening the door?

A14: A Property Showing Agreement or a buyer representation agreement must be signed before showing a home. Agents may need to consider interacting with buyers like they do with sellers at a listing presentation in order to be in compliance. A buyer consultation and a buyer agency contract before seeing a home is the best practice we advise, but for more urgent time sensitive situations, a signed property showing agreement either signed via dot loop or in person before seeing the home is in compliance.

Q15: If we have a buyer agent fee of X percent, and the buyer doesn't pay it the day of closing, will we hold up closing until we get paid? Is Five Star going to be a collection agency for those fees?

A15: This question will take some time to answer, and we will be actively working on it. We would assume that this would be part of the closing disclosure and "Cash to close" for the buyer. So, if they were short the cash to close, then the closing would indeed be held up.

Q16: If your buyer's agency agreement says 2% and sellers offer 3%, are you entitled to the 3%?

A16: No. Best to draft the agreement for the commission you desire, rather than less on the buyer agent contract. You can choose to lower your fee, but not raise your fee at the time you write an offer.

Q17: What happens if I have a buyer under buyer agency, but they don't have funds to pay me? They find a house they really want to see, but the seller will not pay for BA. Do I send the buyer to the Listing Agent? Is the Listing Agent required to sign a buyer's agency (even though they represent the seller)?

A17: The Listing Agent is not required to sign a representation agreement with the buyer. In this case, we are hopeful that there will be new solutions. Maybe our lender partners will find ways to help a buyer in this scenario gain buyer representation with financing.

Q18: Do Transaction Coordinators go away? A Buyer or Seller must be represented?

A18: No, an agent could still be a transaction coordinator, and such fees will still be negotiated between a seller and buyer and who chooses to pay what fees. We have a Transaction Coordinator Agreement for these types of scenarios.

Q19: Hypothetical: We have a buyer who asks us to work for them, but they cannot afford the commission stated in the Buyer Agency Agreement. If the seller does not compensate, and we decide not to work with the buyer, could this be considered financial discrimination? Could fair housing laws in the future include income class as a protected class?

A19: We understand this is a delicate situation, but agents cannot work for free. If a buyer cannot afford the services, they can try to negotiate a commission with another agent that fits their budget. The new law requires buyers and buyer's agents to negotiate their own commissions. If an agent decides they can't work for a certain amount, that's a business decision.

However, you could have a conversation with the buyer to explain that you will try to negotiate a seller concession or a commission to help them cover the buyer agency commission. There's no guarantee a seller will agree, but it's an option. Buyers need to understand this process and may need to find an agent who will accept a lower commission, find a home without representation, or work with you to negotiate a seller concession. As long as this process is clear to the buyer, it should not be an issue with fair housing.

Future inclusion of the income class as a protected class in fair housing laws is uncertain, but we currently don't see this as financial discrimination.

Q20: What happens if I am the listing agent and a buyer can't afford their own buyer's agent, so they want me to show the house? I, at this point, do not work with anyone that isn't in my sphere or a reference. I am worried it is unsafe to meet with a random buyer to show my listing.

A20: Agents do have access to the app FOREWARN that can perform a check on a potential person. Agents should always be diligent about showing homes to unknown people and consider having another agent with them when a client is unknown. Another option is to change your practice and demand a preapproval letter from all unrepresented clients before a showing occurs. No approval, no showing. This is something we will continue to explore on best practices.

Q21: Will Five Star have one major website that commissions will be advertised for both sides? Will we need to have these fields added to our personal websites?

A21: Most likely there will be a new tool or solution that arises. We don't think it will be practical to go to a bunch of websites to find commission rates. We believe there will be new standards of

practice that happen, with some level of automation. Too soon to tell. For now, we think the #1 method will be text/ email/ phone.

Q22: Do you think lending can change a bit to allow buyers to pay?

A22: Hopefully. We are seeing many lenders asking us to put certain language on the purchase agreement to allow the seller to pay x% of the sales price towards the buyer's settlement charges, fees, closing costs. Seller and buyer further agree the concession will be used to pay the buyer's commission obligation to the broker. We are waiting for finalized language that will be coming soon.

Another option: Seller to credit buyer xxx at close of escrow to satisfy buyer's contractual agreement with buyer's broker. Must have a Buyer Agency Agreement in place.

Q23: Do you know if we will be getting a new Purchase Agreement that has a line for buyer agent commission paid by the seller?

A23: All of the Purchase Agreements will need to be revamped to remove any language stating commission will be paid by the seller to fulfill the buyer's commission. We are waiting for clarity from the associations and for updated documents to address the new law and requirements.

Q24: Freddie and Fannie have adjusted over the years when lending situations have arisen. Don't you think that they will do something? For instance; increasing the percentile of concessions offered per loan type? My bigger concern would be eliminating dual agency. Without another option of free representation (buyers approaching seller's agent to represent as they would at least make a commission), if that is eliminated, it will put buyers in a position to pay for representation if they want it. Is that fair? New Mexico has already updated their Agency disclosure to represent something along the lines of dual agency not being in play. Do you see a buyer's counter suit, claiming socio-economic discrimination? After all, sellers paying commissions for the last decades has allowed prior buyers to afford to purchase with representation. How is it not discrimination with the buyers now? These are all things that have crossed my mind.

A24: We are still waiting on final rulings to understand this further. If a client can't pay your fees, then you have a right to work for free if you choose. Remember, sellers can still offer commission. A buyer and buyer's agents must also determine an acceptable rate. Agents can always write into the buyer agency agreement that the buyer's agent and buyer agree to find a home where the seller is willing to offer a commission or a seller concession of x% towards buyer's closing costs and fees. It can further be explained that there's no guarantee that a seller will offer a commission or a concession, but as your buyer's agent, I will try to negotiate this commission or a seller concession so it can be used to pay your negotiated commission obligation to Five Star.

Agents do not need to practice dual agency. Stay in the listing position, and if you negotiated x% commission compensation from the seller, then you can stay in the listing representation position. When the unrepresented buyer comes to you, write up an offer on their behalf, and then accept the entire x% commission your seller was offering.

Q25: Do you feel we will still use both the Designated Buyer Agency Agreement AND an Exclusive Buyer Agency Agreement?

A25: Yes, designated agency allows YOU to be singled out as the Realtor representing a person, rather than every Five Star agent representing your client. Exclusive Buyer Agency is the binding contract between you and your buyer clients.

Q26: How is it going to look on the lending side if we write it up as concessions?

A26: There are multiple options for language to address this. One option is: Seller to credit buyer xxx at close of escrow to satisfy buyer's contractual agreement with buyer's broker.

Q27: If a buyer does not have enough Cash to Close plus paying a Buyer's Agent fee, can we get paid over time if the seller will not pay a Buyer's Agent fee?

A27: We are looking into options for clients.

[NAR'S FAQ'S](#)