



What Agents Should Know

Next Steps in the Industry

If I can't show a house without a signed agreement, how would an open house work?

As a listing agent you represent the seller, so holding the house open is not a problem. If the buyer chooses to ask for representation a **Buyer Broker Employment Agreement** must be established. This will be a state-by-state nuance that will provide how we are to work with best practices. The specifics are not defined today.

I anticipate a sliding scale of compensation and services (i.e: for X%, The buyer's agent will do Y). Is this an option? What might that look like? What paperwork is associated?

The **Buyer Broker Employment Agreement** will be needed to have the final, total amount a buyer's agent charges that the buyer agrees to pay, much like the listing agreement. This will be agent-to-agent to provide their menu of services and fees that they might attach to the employment agreement.

How do I coach my sellers on the pros and cons of offering buyer's agent compensation?

It's just like coaching the seller on their pricing for the current market conditions: pricing for time, property condition, and who their buyer is (first-time, investor, or move-up buyer). We've prepared a listing presentation addressing buyer concessions, the most updated version of which can be found in our [Buyer Representation Toolkit](#).



What Agents Should Know

Next Steps in the Industry

What are my options for getting paid as a buyer's agent?

Option 1: Buyer pays commission

Option 2: Seller pays commission

Option 3: Buyer asks for \$X in seller concessions/closing costs to cover buyer agent commission

Option 4: Seller pays a portion & Buyer Pays a portion

This clause should be used in the purchase agreement when asking the seller to credit the buyer:

"Seller to credit buyer X (i.e specify a % or fixed \$ amount) at close of escrow to satisfy buyers contractual agreement with buyers broker."

The key here is you must ask for the concession in the contract with a true buyer broker agreement (not just an agency agreement). We do anticipate rule changes and we will be bringing those to you as we are aware of them.

How do I phrase my commission requirements on the buyer-broker agreement to ensure I am not leaving money on the table?

You must establish your compensation for service with the buyer at the first meeting, prior to opening a door. Your compensation may not increase beyond the amount initially agreed to in writing with the buyer, even if the seller is offering to pay more. You can only reduce your compensation.

Does this affect running CMAs in any way?

Yes. A listing that offers no compensation and no seller concessions could potentially sit on the market longer; driving the sales price down. Have a conversation with your seller to help them



What Agents Should Know

Next Steps in the Industry

understand how everything from their days-on-market, the condition of the property (does it need repairs, cosmetic upgrades etc), and what buyers in your marketplace are looking for are all factors affecting their ability to sell their home. Ask the seller if they want to offer seller concessions/seller-paid closing costs.

What is the best practice if the buyer advises you up front that they cannot pay you commission? (i.e: They have only the cash needed for their down payment and normal closing costs but will not be able to get more for your commission. There is still potential that a seller COULD compensate me but if they CANNOT- Is there a potential that I am just working for free?

Yes, you can tell them you will work for free, but then you are definitely working for free. You must establish a buyer-broker employment agreement with a fee for service to receive any amount no matter the source. Establish your fee upfront as you may always reduce it later.

If I'm the listing agent and my seller wants to avoid compensating a buyer's agent but an unrepresented buyer comes straight to me to write an offer – my duty is to sell the house.....so now what? Do I become a dual agent?

Not necessarily. You do not have to offer agency to an unrepresented buyer. Your seller may direct you to show the property & bring an offer. Be Careful. Your local state law takes effect here on what you are required to do for an unrepresented party. Think of this in reverse, you go to a For Sale By Owner (FSBO) who won't pay you but your buyer wants to buy and is paying you. You write the offer and they need help understanding the contract & making counteroffers and disclosures. You don't represent the FSBO, but it is tricky and state law prevails.



What Agents Should Know

Next Steps in the Industry

What is the best practice for informing buyer agents of compensation offerings if this is not allowed on the MLS? (i.e Could it be listed in Showing Time?)

As a listing agent beginning mid-July, you will not be able to put offer of compensation into the MLS, Zillow, Realtor.com, Showing time or any other 3rd party site available to multiple brokers. Buyer agents may call you and ask if there is an offer of compensation, but they must have the terms of the agreement (the amount and paid by whom) established in writing.

What happens to VA buyers now? Are they stuck with only listings that offer compensation or represent themselves?

At present the new rule is not in effect. VA will likely evolve but we do not have the exact details on how and what that will look like yet.

Does the listing agent need a Buyer's agreement before showing the home in a dual representation situation?

Yes.

Is eXp going to have a minimum commission amount for a buyer transaction? If so, what will that look like?

We already do, the minimum company dollar is \$500 just like for listings. This amount can be paid by the client or the agent.



What Agents Should Know

Next Steps in the Industry

In the concessions, do you have to specify what goes to what? For example, you do \$5,000 seller concessions: \$2,000 to the buyer agent and \$3,000 to the buyer's closing cost.

Maybe, we will see how this flushes out. In some markets, the sales contract or purchase agreement provides a single data entry for a dollar amount to be entered in for the total seller-paid closing costs. Itemization could be a strategy to show the seller where the concession is going. This should be considered market by market.

Do the buyers only pay the “fee” for employment if they close on the house or do they pay upfront (retainer fee)?

It depends. This is a negotiation between the buyer and their agent. We do see retainer fees now that are collected upfront and credited to the buyer towards the remaining amount due at closing. It's very similar to listing retain fees.

Is there anything a listing agent needs to do now that would prevent having to sign a new agreement when things change in July?

Knowledge and clarity for your seller are key in a shifting market to help them understand your role and strategy for selling their property. Have the conversation about what is happening today and what will change in MLS in mid-July with no promotion of buyer compensation. Any active listing agreements in place after the new rule takes effect will need to be amended to reflect that offers of compensation cannot be communicated via the MLS.