

# FAQS

NAR SETTLEMENT AGREEMENT



## QUESTIONS?

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## Changes to NAR/MLS Practices

Changes to NAR/MLS practices come into effect on July 15, 2024. There are several resources for VAR members to access information to frequently asked questions (FAQs). Members are encouraged to read through these FAQs prepared by VAR, as well as staying up-to-date on changes by visiting NAR's Settlement Agreement website at [facts.realtor](https://facts.realtor).



VISIT [NAR.REALTOR/THE-FACTS](https://NAR.REALTOR/THE-FACTS)

## Why are the PrimeMLS Rules and Regulations changing and requiring practice changes?

NAR entered a proposed settlement to secure a release of liability for as many members as possible and end litigation of claims brought on behalf of home sellers related to broker commissions. The proposed settlement preserves the choices consumers have regarding real estate services and compensation. NAR modified the MLS policy and as a result, PrimeMLS amended their Rules and Regulations to comply with the practice changes that will impact the way Realtors® across the country practice.

The changes aim to increase the transparency surrounding compensation to real estate professionals and to increase conversations with consumers. While commissions have always been negotiable, the expectation is that Realtors® will remind consumers of this and disclose and make clear how they get paid and who is paying the fees.

As a reminder when reviewing these FAQs, your principal/managing broker is ultimately responsible for giving you direction and ensuring compliance. Consult with them on how best to move forward.

### Proposed Settlement and NAR/MLS Practice Changes:

#### What is changing on July 15, 2024?

- Offers of cooperative compensation will no longer be permitted on the MLS. You will no longer see Buyer Agent or Broker Agent fields and they cannot be added to agent remarks or other platforms like Showing Time.
- Use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited.
- Requirement to disclose to prospective sellers and buyers that broker compensation is not set by law and is fully negotiable. This must be included in conspicuous language as part of any listing agreement, buyer service agreement, and pre-closing disclosure documents (if any).
- Requirement to conspicuously disclose in writing to sellers, and obtain the seller's authority, for any payments or offer of payment that the listing Participant or seller will make to another broker, agent, or other representative (e.g. real estate attorney) acting for buyers. This disclosure must include the amount or rate of any such payment and be made in writing in advance.
- Prior to touring a home with a buyer, in person or virtually, you must have a buyer service agreement. (some exceptions apply for working with a customer, see below). The agreement must contain:
- A specific and conspicuous disclosure of the amount or rate of compensation you will receive or how this amount will be determined, to the extent that you will receive compensation from any source;
  - The amount of compensation in a manner that is objectively ascertainable and not open-ended.
  - A term that prohibits you from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
  - A conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

## Do the changes apply to all Realtors® and all properties?

Yes and No. The MLS changes regarding the removal of cooperative compensation apply to all property.

The requirement that you have a buyer service agreement prior to touring a home only applies to residential property containing between one and four units.

As a reminder, any time client level services are provided, a brokerage service agreement is required under the VREC Administrative Rules.

## Where can I find the most up-to-date information?

- [facts.realtor](https://facts.realtor) is the most up to date resource for Realtors. VAR recommends reviewing the FAQs posted there.
- [competition.realtor](https://competition.realtor) is the most up to date resource for consumers.

## Will it be required to share Buyer Service Agreements with the MLS?

The practice changes require MLS participants working with buyers to enter into a written agreement before touring a home. If reported, PrimeMLS will request delivery of the buyer agent's agreement within 4 business hours.

## What does cooperation through PrimeMLS mean?

Cooperation is the obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interests of their clients.

## For active buyer and seller service agreements, executed prior to July 15, 2024, what do I need to do to be in compliance with the required practice changes?

VAR has developed addendums in the Dotloop library that amend agreements with the required practice changes. For your current agreements, you should complete and execute the required addendums as soon as possible.

For new buyer and seller service agreements, the associated addendum should be executed in tandem with the agreements.

VAR will be making changes to the actual listing and buyer service agreements in the coming months. This is a time-consuming process that requires collaboration with our forms providers, which is why we went with addendums for now.

## Should this addendum also be used for clients that are currently under contract for the purchase of a residential property, but have not closed?

Yes.

## **If compensation offerings are no longer in the MLS, how do I learn if a brokerage and their seller are offering compensation?**

There are several ways:

- Check the listing brokerage's website. Brokerages are permitted to have compensation fields on their own websites for their listings.
- A phone call, text, or e-mail to the listing agent.
- Best practice is to prepare either the Cooperating Agency Agreement or Commission Allocation Agreement to memorialize the offer of cooperation/compensation. This should be done either prior to submitting an offer or as a condition of the offer.

## **I represent the buyer and they want me to include something in their offer that has either the listing brokerage or seller paying the buyer broker fee. Is this permitted?**

Yes. VAR has developed clauses with suggested language to include in the buyer's offer. Ultimately, the decision of a seller to pay or a listing broker to share compensation is one between the seller and their brokerage.

## **Can a listing agent show their own listing to a buyer customer?**

Yes! This is considered a seller service provided for the seller. You are still required to provide the Mandatory Consumer Disclosure prior to a showing. (VREC Administrative Rule 4.6 (b) (2))

## **What about open houses?**

Buyers touring a home hosted by an agent representing the seller are not required to enter into a buyer service agreement to tour the home. The agent representing the seller is providing a seller service for the seller.

Hosted open houses must conspicuously display a poster of the Mandatory Consumer Disclosure and have copies available on request of the consumer. (VREC Administrative Rule 4.6 (h) (1))

## **Can I show a home to a buyer customer?**

Yes, if the seller's brokerage firm is cooperating with a broker's agent. Remember, cooperation and compensation are different. You will need to inquire as to whether listing brokerages are cooperating with broker's agents and also if and what they are offering for compensation, prior to submitting an offer.

Best practice when working with an unrepresented consumer is to explain what customer level services you can provide without a buyer service agreement and what client level services you cannot provide. Disclosure of commissions or fees your brokerage will receive and who is paying them is recommended.

## What does it mean to be working with a buyer?

The “working with” language is intended to distinguish MLS Participants who provide brokerage services to a buyer—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.

While broker’s agency is permitted in Vermont, actively identifying multiple properties and setting up showings gets to the definition of “working with a buyer” that triggers the need for a written buyer service agreement.

## Will I need a written cooperation agreement with a listing brokerage for Broker’s Agency?

VREC Administrative Rule 4.11 States: (e) Participation agreements in multiple listing services are an acceptable broker cooperation agreement for creating an agency relationship between brokerage firms.

With compensation being removed from the MLS, it is recommended that firms use the Commission Allocation and Cooperating Agency Agreement to memorialize offers of cooperation and compensation for specific properties.

## My seller client is willing to offer a seller concession. Is this allowed?

Yes. Sellers can offer buyer concessions through PrimeMLS. Seller concessions cannot be limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

## Wouldn’t a seller concession that includes covering the buyer’s brokerage fees risk going over the maximum allowed interested party (IPC) contribution?

No. Cooperative compensation is considered a fee that is “customarily” or “traditionally” paid by the seller, and FHA, Fannie, and Freddie Mac exclude these types of fees from the IPC calculation.

## Is it true that VA loans prohibit buyers from directly compensating agents for their services?

While this has historically been true, Veteran’s Affairs has issued a temporary local variance that allows Veterans to pay reasonable and customary amounts for any buyer broker charges.

Read the guidance here: <https://www.benefits.va.gov/HOMELOANS/documents/circulars/26-24-14.pdf>

Note: VA considers the buyer-broker representation agreement to be part of the sales contract package. As such, VA expects lenders to upload the agreement as part of the package lenders use when requesting an appraisal. VA also expects lenders to retain the agreement in the loan file.

## **As a listing brokerage, can I continue to share my compensation with broker's agents and/or buyer's agents?**

Yes. As required by the VREC Administrative Rules and the practice changes, seller authorization and consent are required. Compensation would continue to be negotiable and should always be negotiated between agents and the clients they represent.

## **What if the listing agent/brokerage is not willing to cooperate with a broker's agent?**

The only other option available is to represent the buyer through a written buyer service agreement. This agreement will detail your fees and compensation and can address the fees being paid in part or in whole through contributions from the seller or seller's brokerage.

## **Can I get paid from a buyer customer?**

No. Under Administrative Rule 4.13

(C) A brokerage firm may only receive the compensation provided in: (1) a written brokerage service agreement signed by the brokerage firm and its client; or (2) an agency agreement with a brokerage firm that has a written agreement described in (1). A brokerage firm shall not collect any compensation for brokerage services except as provided by these rules.

## **Can you show a house as a Broker's Agent and later sign a buyer service agreement with the same buyer?**

Yes, only if the listing brokerage/agent is cooperating with broker's agents. Otherwise, in order to tour the home, a buyer service agreement is required.

Best practice is to inform the consumer of your role, the fee you are being offered, and who is paying it.

Buyer service agreements must conform to the requirements of Administrative Rule 4.10. There are three types of allowed buyer service agreements:

- Nonexclusive (open) buyer agency agreement
- Exclusive buyer agency agreement
- Exclusive right to represent buyer agreement

Any of these agreements can be limited in time or even limited to a specific property. The agreements are required to describe the services provided including any limitation of services.

## **What about these showing agreements I am seeing from companies like Zillow?**

These agreements would violate license law. The VREC Administrative Rule 4.10 only allows for three types of buyer service agreements.

- Nonexclusive (open) buyer agency agreement
- Exclusive buyer agency agreement
- Exclusive right to represent buyer agreement

## What if I am willing to show a property once with no financial obligations from the buyers as a way to get to know them and demonstrate my value as a way of hopefully earning their future business?

This is absolutely permissible. You would need to execute one of the three permitted buyer service agreements. You could indicate your fee is \$0 and, in the agreement, detail any limitations on your services. For example, you could indicate that this agreement is limited to a one-time showing of 123 Main Street, Anytown.

## If the seller of the listing broker offers a bonus or other financial incentive in addition to the offer of broker compensation, can the buyer broker accept the extra compensation?

The buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the buyer service agreement with the buyer unless the agreement is amended in writing.

## Won't these practice changes result in fewer buyers choosing to be represented?

This is not the intention. The goal of the practice changes is greater transparency regarding commissions and fees. Realtors will need to become comfortable with having conversations about compensation as well as articulating their value proposition.

VAR recommends NAR's "105 More Ways" that details all of the things Realtors do to help buyers when purchasing a home. That can be found here: [105-more-ways-2023-11-13.pdf \(nar.realtor\)](#)

## Are there good resources regarding written buyer agreements?

Yes, NAR developed "Written Buyer Agreements 101" that can be found here: <https://www.nar.realtor/the-facts/written-buyer-agreements-101>



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For the latest information & updates, visit NAR's: [nar.realtor/the-facts](https://www.nar.realtor/the-facts)



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