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# HOW ARE REALTORS® COMPENSATED?

As you've probably heard, recent industry-wide changes have been implemented affecting how brokers, and consequently their agents, are compensated. These changes provide greater transparency in every transaction.

Here, we'll explain various options for compensating both buyers' and sellers' brokers. Broker compensation remains fully negotiable and is not set by law. Your REALTOR® will be happy to discuss which items below are applicable to your transaction and help you with a compensation option that best fits your goals.

## SELLER'S BROKER COMPENSATION

- When sellers list their property for sale, they agree to pay the seller's broker when escrow closes. The amount they pay is fully negotiable. When negotiating compensation, the parties may discuss factors such as the broker's expertise and experience, the type of broker services to be performed, and the broker's time and expenses, among other considerations.
- If the property's buyer is unrepresented, the seller may agree to additional compensation for the seller's broker since this circumstance may require additional responsibilities or workload for the seller's broker.
- In some cases, a broker may represent both the buyer and seller in a transaction, which is called a "dual agency." Because many individual agents may work through one brokerage company and some individual agents work with many buyers and sellers, there is a possibility that the same brokerage company and/or agent will represent both the buyer and seller in a transaction. In this case, the broker is allowed to receive compensation from the buyer and seller — through their respective agreements, provided both are advised of the relationship and the total amount of compensation the broker will receive.

## BUYER'S BROKER COMPENSATION

- When a buyer enters into a representation agreement with a broker, the buyer authorizes the broker to locate properties for the buyer and agrees to pay the broker if a transaction is completed. Compensation amounts are not fixed by law and are fully negotiable. When negotiating compensation, the parties may factor in elements such as the broker's expertise and experience, the type of services to be performed, and the broker's time and expenses, among other considerations.
- As required under a settlement reached by the National Association of REALTORS®, brokers participating in Multiple Listing Services (MLSs) are required to have a written agreement with a buyer prior to showing a buyer a residential property or giving a buyer a tour of such a property (this applies to in-person and virtual tours). The agreement must identify the amount of compensation to be paid to the broker for services provided and it requires that the broker does not receive any compensation more than the amount specified in the agreement. A written agreement establishes clear, mutual expectations and helps avoid misunderstandings over the buyer and broker's respective duties and the amount of compensation the buyer's broker is to be paid.



- When a buyer enters into a representation agreement with a broker, the buyer agrees to pay the broker when escrow closes. However, the person responsible for the payment may be negotiated in the transaction. A few examples are discussed below:
  - Example One: The buyer pays the compensation pursuant to their buyer representation agreement.
    - A buyer's broker may negotiate the amount of compensation directly with the buyer and then document that agreement in a buyer representation agreement. The buyer then becomes contractually obligated to pay the broker by providing funds to escrow prior to the closing of a transaction.
  - Example Two: The seller compensates the buyer's broker as requested by the buyer in the purchase offer.
    - A buyer may make a conditional offer to the seller by including a term in the purchase offer asking the seller to pay the buyer's broker if the buyer has already agreed to pay their own broker pursuant to a buyer representation agreement. If such a term is included in the purchase offer, the request will become one term among many that a seller may accept, reject, or negotiate by way of a counteroffer. The option of asking the seller to pay the buyer's contractual compensation obligation should be discussed when creating a buyer representation agreement and prior to the buyer making an offer.
  - Example Three: The buyer's broker negotiates directly with the seller.
    - If a seller is unrepresented or does not have an exclusive agency relationship with another broker, a buyer's broker may approach that seller asking the seller to sign an agreement to pay the buyer's broker. In this situation, the seller agrees to pay the buyer's broker compensation without necessarily creating an agency relationship with the broker. When that happens, the buyer's broker informs the seller that they will be acting on behalf of the buyer only, and not act as the seller's broker, throughout the transaction. However, because the seller is unrepresented, the buyer's broker may have to do more work to facilitate the transaction and that may factor into the negotiation of the single party compensation agreement.

