

## FREQUENTLY ASKED QUESTIONS

### General Settlement Questions:

#### **Can we put information regarding the broker compensation in ShowingTime, Supra, MLS Remarks?**

The settlement prohibits the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use will result in the MLS terminating the Participant's access to any MLS data and data feeds.

#### **How will we know what compensation is being offered?**

There is no system in place to promote whether selling broker compensation is being offered for a listing, including any offered compensation amount or whether the seller is open to paying compensation. Each brokerage will establish its protocol if and how cooperative compensation will be offered and promoted. As a reminder, a buyer's agreement establishing the buyer agent compensation must be entered into before showing any property. To ensure each brokerage's specific practices are compliant, the Association encourages any policies or forms that are not offered by the Association be vetted by each broker's counsel.

#### **If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?**

No. In this case, since the MLS Participant is only working for the seller and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.

#### **Who is going to monitor compliance with the Buyer Agreement requirement?**

Per MARIS 5/24/2024: Due to the terms of the NAR settlement, the MLS will require signed buyer agreements to be executed before showing properties. This paperwork MUST be signed by the buyer's agent or whoever signs via the brokerage policy and the Buyer before the showing. To ensure compliance, MARIS will require proof of a signed form if/when a complaint is received.

#### **Effective Date vs Contract Date Term. If you have another date noted, does that override the effective date?**

The new and revised agreements establish that the "Effective Date" shall be the date of final acceptance thereof, as indicated by the date adjacent to the signature of the last party to sign this Contract or (specify if otherwise) \_\_\_\_\_. If a date later than the Effective Date is noted in the blank, MLS deadlines and other activities can be based on that date.

Example: Two parties sign on 5/10/2024, but the third signature is 5/15/2024. Effective date is 5/15/2024

#### **Will we need to amend contracts for current listings or transactions?**

MLS Participants were required to disclose to owners of all active listings before the MLS policy changes went into effect on August 17, 2024, that compensation is not set by law and is fully negotiable. Active agreements can be amended, or a separate disclosure can be provided to satisfy the requirement. Listing

Contract Settlement Disclosure (Form #2050) has been created for this purpose. Any Association-created listing agreement entered into on or after July 23, 2024, complies with this disclosure requirement.

It should be recognized that additional changes to the association-created listing agreements effective October 15, 2024 eliminated the ability for owners to authorize the listing broker to offer cooperative compensation to selling brokers. If you have an active listing agreement with a seller that includes an offer of cooperative compensation, you should seek out your brokerage policy on the need to update or amend this agreement. The challenge would be that since the Cooperative Compensation Disclosure (CCD) has gone away and the October 15, 2024 forms do not include the option to offer cooperative compensation, there is no mechanism offered by the Association, to properly disclose the cooperative compensation as required under the terms of the settlement. Furthermore, absent an amendment to the listing agreement, the owner may still be committed to paying the listing broker both sides (listing and selling).

### **Clarification on who signs where on the Listing Agreement / Buyer Agreement:**

This answer varies depending on whether your brokerage practices Designated Agency and/or Authorized Agency as outlined in your brokerage policy.

If Designated Agency is practiced, the managing broker must sign either agency agreement –this designates the agent and executes the document. Only the managing broker’s signature is required in this instance and only in one place on the form.

If Designated Agency is not practiced, the answer depends on whether Authorized Agency is permitted. If it is not, the managing broker must sign the agency agreement and only in one place on the form. If Authorized Agency is permitted, the Authorized Agent can sign in the appropriate location.

It is suggested that you consult your brokerage policy on this.

### **What if the Buyer negotiates compensation in the purchase price, but the house doesn't appraise?**

The terms of your contract regarding appraisal would determine what happens in this situation. There are no special terms regarding appraisals and negotiated compensation.

### **What documents satisfy the settlement requirement for an executed Buyer’s Agreement before touring a property?**

The settlement does not mandate an agency relationship with a buyer who is touring homes with you. The settlement just requires that MLS Participants working with a buyer enter into a written agreement before the buyer tours any home. The list of forms below complies with the settlement agreement. You should consult your brokerage for guidance on which form to use. The type of form used will depend on the type of relationship you are establishing. Also, remember that your brokerage may have its own forms you must use.

- Buyer’s Exclusive Agency Contract (Form #2125)
- Buyer’s Non-Exclusive Agency Contract (Form #2124)
- Transaction Brokerage Buyer’s Exclusive Contract (Form #2127)
- Transaction Brokerage Buyer’s Non-Exclusive Contract (Form #2128)

## **What provisions must be included in written buyer agreements?**

The written agreement must include:

- A specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined to the extent that the Participant 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 the Participant 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.

## **When might I need to amend my listing contract with the owner?**

If you entered into a listing agreement with the owner prior to October 15, 2024 which included an offer of cooperative compensation to the selling broker and intend to use the Association's forms for the transaction. See the answer to FAQ #3.

## **Can I accept a bonus?**

The total compensation received by the selling broker from ALL sources shall not exceed the amount authorized in writing between the selling broker and buyer. This includes coop comp, additional comp, bonuses, etc.

So, if any bonus amount causes the total compensation to exceed the amount authorized by the buyer, the selling broker cannot accept the excess amount over and above what is authorized.

Note: Any bonuses paid out must be disclosed and authorized by the seller and buyer, respectively.

## **Who can sign the listing and buyer contracts as authorized agent (AA)?**

It depends on your company policy. Per the MREC, an Authorized Agent (AA) cannot be given the authority to sign if there is a Designated Agent (DA). Once assigned as a DA by the Managing Broker (MB), a DA can act as an AA. The MB must sign to appoint the DA. Company policy can allow a DA to sign as an AA once appointed.

Some companies practice DA but require MB to sign all docs (does not allow AA), while other companies practice DA and allow those agents to act as an AA. The AA portion is not determined by a DA status or lack thereof. 2 different situations and policies within a brokerage.

## **Questions related to Par 3 - "Purchase Price/Concessions/Earnest Money" (Form #2090):**

### **What amount belongs on line 34?**

The amounts listed in line #34 are for items that are a charge to the buyer but the seller has agreed to pay through a credit made to the buyer at closing (e.g., closing costs, prepaids, points, selling broker compensation, and other fees allowed by lender, etc.). Although the seller has agreed to provide a credit to the buyer these still show up as a charge to the buyer. Some lenders and loan programs may have limits as

to the amount of credit a seller can issue and some downpayment assistance programs may not let buyer pay compensation to the selling broker. Depending on the lender and depending on the amount of closing costs credits provided line 34 may not be the best way to handle this. When a lender sees an amount considered not to be customary they may ask how that is being used. Be prepared to split this out for your lender to identify what portion is to be used for selling broker fees and what portion is to be used for other closing expenses. Additionally, it might be helpful to have a conversation with your buyer's lender upfront to evaluate the best way to reflect/ask for the Selling Broker compensation.

**(Line 34)**

\$ \_\_\_\_\_ AND \_\_\_\_\_% of purchase price (\$0 if none stated) shall be credited by Seller at Closing toward Buyer's closing costs, prepaids, points, Selling Broker compensation, and other fees allowed by lender. (Form #2090)

**Why was Form #2109 created and what is the meaning behind the check box on line 41?**

Form #2109 was created to accommodate those situations where the seller has agreed to pay the selling broker their compensation directly. Form #2109 is considered a rider and when the parties (including selling broker) are in agreement it becomes part of the sale contract upon execution. It should be noted that this form does require the selling broker's signature.

A reasonable question would be "Why not just put this in the contract?" This rider was created to satisfy the requirements of the MREC, which requires a separate agreement for this type of arrangement. Typically, you have an agreement between seller and listing agent (i.e., listing agreement) and between buyer and selling broker (i.e., buyer agent agreement) but there is no agreement between seller and selling broker. Form #2109 serves that purpose.

It should be noted that the form goes on to state that any payment of compensation from seller to selling broker shall not create any additional obligations, duties or relationships with or between any other party.

**(Line 41)**

Buyer is requesting Seller to pay compensation to Selling Broker at Closing per the terms of the attached "Broker Compensation Rider" (Form #2109) and/or other compensation agreement. This is in addition to any credit at Closing listed above.

**What is the difference between the Commission Agreement (Form #2107) and the Broker Compensation Rider (Form #2109)?**

The Commission Agreement (Form #2107) is Broker-to-Broker. This form is unchanged. Examples include reductions negotiated between brokers after agreed-upon terms (e.g., needed repairs). Only the brokers of a transaction sign it.

The Broker Compensation Rider (Form #2109) memorializes the compensation paid from the seller to the selling broker. All of the parties of the transaction sign it.

**Who initiates the Broker Compensation Rider?**

Upon the direction of the buyer the selling broker would initiate the Broker Compensation Rider by including it as part of the sale contract and offer to purchase.

## How can I ensure that I get paid?

Per the settlement agreement, the buyer is now directly responsible for compensating the selling agent if seller does not agree. The seller can still agree to compensate the selling broker (or the seller may authorize the listing broker to offer cooperative compensation, if your individual brokerage policies and any forms allow for this). However, in no circumstance can a selling broker accept more compensation from any sources than what buyer and selling broker agreed in their broker agreement.

After consulting your buyer to confirm they want to ask seller to offset all or a portion of their compensation obligation, you can use the Broker Compensation Rider (Form #2109) to request this compensation directly from the seller. The form should be filled out indicating the amount of compensation to be paid by seller to selling broker and executed by the buyer, seller and selling broker. Line 41 of the Sale Contract should be checked and the form should be attached to the Sale Contract. Alternatively, line 34 of the Sale Contract could be used but only after consultation with the buyer's lender.

## How should a seller respond if they are not in agreement with the compensation requested in the Broker Compensation Rider?

In this situation it would be recommended that you execute the Sale Contract Counter Offer (Form #2164). Form #2164 should be filled out using one of the "regular" counter lines (e.g., line #18) with "Rider#" filled in as Form #2109 with a note that a new BCR is attached. It is imperative that a new Form #2109 is attached and that there is no attempt to negotiate the amount on the counter form itself since Form #2109 requires the selling broker signature and the counter form does not. Using this form will maintain MREC compliance.

18 5. Paragraph# \_\_\_\_\_, Line# \_\_\_\_\_ or Rider# \_\_\_\_\_ is changed as follows: \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

21 6. The \_\_\_\_\_ additional attached pages contain terms that are an integral part of this Counteroffer, identified as follows: \_\_\_\_\_  
22 \_\_\_\_\_

23 EXPIRATION: This Counteroffer must be accepted by \_\_\_\_\_ m. of \_\_\_\_\_ ("Acceptance Deadline").

24 \_\_\_\_\_  
25 SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

26 \_\_\_\_\_  
27 Printed Name \_\_\_\_\_ Printed Name \_\_\_\_\_

28 \_\_\_\_\_  
29 **WE ACCEPT THE TERMS SET FORTH IN THE SALE CONTRACT, AS MODIFIED BY THIS COUNTEROFFER  
(INCLUDING ANY ATTACHED ADDENDUM OR RIDERS).**

### Resources:

<https://www.nar.realtor/the-facts> This has some great FAQ that have been asked in the webinars. This can be a good training opportunity to walk through with your team.

Going forward, you can use the [Contract Forms Suggestion Form](#) to submit comments and questions regarding the forms. The Contracts & Forms Committee will review all submissions.

MARIS updates: <https://marismls.com/softwareupdates>

MREC phone number (573-751-2628) and Rules and Statutes <https://pr.mo.gov/realestate-rules-statutes.asp>

Missouri REALTORS® Legal Line (573-447-5278) <https://www.missourirealtor.org/risk-management/legal-line>