



New Broker Compensation Rules

What Fund Members need to know.

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Agenda

- **Recap of new rules (high level)**
 - MLS prohibitions/guard rails
 - Buyer broker compensation
- **Dive into some details**
 - New Florida Realtors® forms
 - New FRBAR Riders
 - New Compensation Agreements
- **Fund Member/Closing agent role**
- **Resources for Fund Members**



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New Rules

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New Rules

- No offer of broker compensation can be made on or through the MLS
- Agreements between consumers and brokers must contain a disclosure in bold print:

**“Brokers commissions are not set by law
and are fully negotiable.”**



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New Rules

- **Before a Realtor can “work with” a buyer or “tour a home” with a buyer, there must be a written agreement between Buyer and Buyer’s Broker**
 - Showing Agreement vs. Buyer Brokerage Agreement
 - Must provide for payment to the Broker
 - Amount must be “objectively ascertainable”
 - This is the maximum the Buyer Broker can receive through “any source”
 - Trumps subsequent agreements with conflicting terms!



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Buyer Brokerage Agreements

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Buyer Brokerage Agreements

Key Provisions

7. **COMPENSATION:** **Broker's** compensation is earned when, during the term of this Agreement or any renewal or extension, **Consumer** or any person acting for or on behalf of **Consumer** contracts to acquire real property as specified in this Agreement or defaults on any contract to acquire property. This compensation is for **Broker's** services for **Consumer**. Compensation received by **Broker**, if any, from an owner or owner's broker for services rendered to **Consumer** will reduce any amount owed by **Consumer** per this paragraph.

(a) **Purchase or exchange:** \$ _____ or _____ % (select only one); or \$ _____ or _____ % plus \$ _____ (select only one) of the total purchase price or other consideration for the acquired property, payable no later than the date of closing specified in the sales contract; however, closing is not a prerequisite for **Broker's** fee being earned.

14. **ACKNOWLEDGMENT; MODIFICATIONS:** **Consumer** has read this Agreement and understands its contents. This Agreement cannot be changed except by written agreement signed by both parties. Electronic signatures will be acceptable and binding. **Brokerage commissions are not set by law and are fully negotiable. Broker may not receive compensation from any source that exceeds the amount or rate agreed to with Consumer.** However, **Consumer** agrees that **Broker** may receive separate compensation from owner of the property for services rendered to owner by **Broker**, for which **Consumer** will not be responsible.



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Buyer Brokerage Agreements

Other Provisions

2. **TERM:** This Agreement will begin on the _____ and will terminate at 11:59 p.m. on the _____ ("Termination Date"). However, if **Consumer** enters into an agreement to acquire property that is pending on the Termination Date, this Agreement will continue in effect until that transaction has closed or otherwise terminated.

3. **PROPERTY:** **Consumer** is interested in acquiring real property as follows or as otherwise acceptable to **Consumer** ("Property"):

- (a) **Type of property:** _____
 (b) **Location:** _____

6. **RETAINER:** A non-refundable retainer fee of \$ _____ for **Broker's** services provided for **Consumer** ("Retainer") is earned and payable upon execution of this Agreement. This Retainer is in addition to any compensation earned by **Broker**. **Broker** and **Consumer** agree the Retainer is for the real estate services described herein and does not constitute a fee paid for a rental information list as described in section 475.453, Florida Statutes.



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Working with Buyer

- **How does the Buyer Broker find out if Seller is willing to pay anything toward BB compensation?**
 - BB contacts the listing agent – phone, text, email?
 - Listing agent/broker website
 - Flyers on-site
 - Is there a Seller concession shown on the MLS?
 - Social Media
 - Make an offer!



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Changes to Listing Agreements

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Working with Seller

- **Where does Seller's willingness to pay show up?**
 - Listing Agreement
- **Seller can**
 - Agree to pay listing broker X% (Par. 8) and authorize listing broker to pay Buyer Broker X% from that amount. (Par. 10a)
 - Agree to pay Buyer Broker directly – X%. (Par. 10b)
 - Refuse to pay anything. (Par. 10c)
- **Seller concessions (Par 3c)**
- **Modifications to Florida Realtors Listing Agreement**



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Listing Agreement

- 8. Compensation:** Seller will compensate Broker as specified below if a buyer is procured who is ready, willing, and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to Seller. Seller will pay Broker as follows:
- (a) _____ % of the total purchase price plus \$ _____ OR \$ _____, no later than the date of closing specified in the sales contract. However, closing is not a prerequisite for Broker's fee being earned.



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Listing Agreement

- 9. Notice to Seller Regarding Buyer Brokers:** The buyer's broker, even if compensated by **Seller** or **Broker**, will provide services for the buyer. **Seller** is advised and is aware that **Seller** may, but is not required to, compensate a buyer's broker upon closing. **Seller** may choose to enter into a separate written agreement to pay buyer's broker or may approve **Broker** to pay buyer's broker in accordance with paragraph 10. **Seller** also understands
- (a) "Buyer's broker" may include this **Broker** if **Broker** also works with buyer on this transaction;
 - (b) If this occurs during the duration of this listing, **Broker** will be entitled to the compensation in paragraph 8 for services performed for **Seller**, as well as the buyer's broker compensation in paragraph 10(a) for services performed for buyer; the **Seller** should therefore take this into consideration when negotiating compensation; and
 - (c) **Broker** may receive separate compensation from buyer for services rendered to buyer by **Broker**.
- 10. Compensation to Buyer Brokers: Brokerage commissions are not set by law and are fully negotiable.** **Seller** approves the following (check all that apply; if no option is checked then option (c) is deemed to be selected):
- (a) ☐ **Seller** authorizes **Broker** to offer compensation to buyer's broker in the amount of: _____% of the purchase price or \$_____. (This amount will be paid from **Broker** to buyer's broker from the compensation amount agreed to in paragraph 8.) This compensation will be set forth in a separate written agreement between **Broker** and buyer's broker.
 - (b) ☐ **Seller** authorizes **Broker** to offer compensation to buyer's broker from **Seller** in the amount of: _____% of the purchase price or \$_____. This compensation will be set forth in a separate written agreement between **Seller** and buyer's broker.
 - (c) ☐ No compensation will be offered to buyer's broker.



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Listing Agreement

• Par 3(c) – Seller Concession

- (c) **Seller Expenses:** **Seller** will pay mortgage discount, other closing costs, or concessions not to exceed \$_____ and any other expenses **Seller** agrees to pay in connection with a transaction.



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New FRBAR Riders

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Options for Buyer

- **If BB cannot get any information, what next?**
 - Make an offer that includes the Seller agreeing to pay X% to the Buyer Broker.
 - Include in “other provisions” of the FRBAR contract
 - Seller agrees to a concession (could be on MLS)
 - Use one of the new riders produced by FRBAR
 - “FF” – a credit to the buyer toward Buyer Broker compensation
 - “GG” – a contingency



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Contract Rider “FF”

FF. CREDIT RELATED TO BUYER'S BROKER COMPENSATION

Buyer has entered into a separate brokerage agreement, as may be amended (a "Buyer Broker Agreement", which is NOT incorporated herein by this reference) with _____ (insert name of brokerage, "Buyer Broker").

At Closing, Seller agrees to credit Buyer the sum(s) described below, which for disclosure purposes only the parties agree is related to **Buyer's obligation under the Buyer Broker Agreement to pay all or a portion of Buyer Broker's compensation** (check one):

☐ _____ % of the Purchase Price

☐ _____

☐ _____ % of the Purchase Price PLUS \$ _____

In the event the credit described above exceeds the amount allowed by Buyer's lender for such contributions, then, to the extent permitted by Buyer's lender, (check one; if no box is checked, then *the balance of the credit will be paid by Seller directly to Buyer Broker*) ☐ the balance of the credit will be paid by Seller directly to Buyer Broker, or ☐ the credit will be reduced to the maximum amount allowed by Buyer's lender.

In the event the credit described above exceeds the limit allowed by the Buyer Broker Agreement, then the credit will be adjusted to the amount allowed under the Buyer Broker Agreement, as may be amended.



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Contract Rider “GG”

GG. SELLER'S AGREEMENT WITH RESPECT TO BUYER'S BROKER COMPENSATION

This Contract is contingent upon (check one) ☐ Seller's Broker and Buyer's Broker or ☐ Seller and Buyer's Broker executing a compensation agreement with terms acceptable to Buyer ("Compensation Agreement") within _____ days (if left blank, then *three (3) days*) after the Effective Date ("Time Period"). If the Compensation Agreement described herein is not executed and delivered within the Time Period, then Buyer may, within three (3) days thereafter deliver written notice to Seller, terminating this Contract in which event the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract. If Buyer fails to timely deliver said written notice to Seller, this contingency shall have no further force or effect.



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Compensation Agreements

CASB

Compensation Agreement - Seller to Buyer's Broker



4. BUYER'S BROKER COMPENSATION

If Buyer's Broker is the procuring cause of the sale of Property during the Term, Seller will compensate Buyer's Broker as stated below at closing of Property.

Seller agrees to compensate Buyer's Broker (CHECK ONE):

- ☐ \$ _____ (flat fee)
- ☐ _____ % of the gross purchase price of the Property plus \$ _____.
- ☐ other (specify): _____



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Compensation Agreements

CABB

Compensation Agreement – Seller's Broker to Buyer's Broker



5. BUYER'S BROKER COMPENSATION

Seller's Broker will compensate Buyer's Broker as stated below at closing of Property if Buyer identified above in paragraph 3 closes on Property and Buyer's Broker is the procuring cause of the sale of Property during the Term. If no buyer is identified in paragraph 3, Buyer's Broker will be compensated at closing of Property if Buyer's Broker is procuring cause of the sale of Property during the Term.

Seller's Broker agrees to compensate Buyer's Broker (CHECK ONE):

- ☐ \$ _____ (flat fee)
- ☐ _____ % of the gross purchase price of the Property plus \$ _____
- ☐ other (specify): _____



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Discussion

- Listing Agreement Par. 3c vs. Rider FF
- Listing Agreement Par 8 exceeds BB Agreement
- Loan considerations
- **Role of Fund Member**
 - Advising Brokers and Agents
 - Advising Buyers and Sellers
- **Role of Closing Agent**



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Fund Resources

- thefund.com
- Quick reference guide
- Presentations for Fund Members
- Florida Realtors© FAQs & other resources



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Thank you for your time and attention

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