

NAR MEMBER RESOURCE: DOS AND DON'TS WHEN WORKING WITH BUYERS

The practice changes required by NAR's settlement must be implemented in good faith. NAR opposes any attempt to circumvent the practice changes.

This resource will help you implement the practice changes and empower you to transact business consistent with the settlement, your ethical duties, and in the best interest of consumers. It is meant to provide clarity about business practices allowed under the settlement, as well as those that are not permitted. NAR members should not engage in the practices that are “don'ts” in this guide.

The consequences for failing to abide by the terms of the proposed settlement may be severe—including losing your released status under the settlement and losing NAR membership. Regardless of your NAR membership status, if you fail to abide by the terms of the settlement, you can lose MLS access or even face possible legal liability.

Below are important dos and don'ts to observe when working with buyers. Please continue to follow facts.realtor for the most up-to-date dos and don'ts and all updates on how to navigate the settlement and practice changes, as well as for resources to help you continue to deliver value to and assist homebuyers and sellers on the homeownership journey.

DOS WHEN WORKING WITH A BUYER

- ✔ **Clearly and frequently demonstrate your value.**
 - At the outset of the relationship, communicate your unique expertise and experience and explain that one of the core reasons to use a REALTOR®, instead of just a real estate licensee, is that REALTORS® are required to act in the client's best interest under the REALTOR® Code of Ethics.
 - Your value includes working to find the buyer a home that meets their distinctive needs. Consider sharing [this guide](#) about “REALTORS'® Duty to Put Clients' Interests Above Their Own” with your buyer.

- ✔ **Explain what a written buyer agreement is and why the buyer is being asked to sign it.**
 - Explain that this is an agreement outlining the services the agent will provide and what they will be paid for those services.
 - Explain that the purpose is to ensure buyers are directly involved in the negotiations of the amount their broker is paid.
 - Inform the buyer that obtaining this agreement is a requirement that most MLSs put in place for participating real estate professionals. (Note that it could also be a state law requirement—consult your state and local laws.)
 - Be clear that you must have an agreement in place before touring a home with the buyer, and that they should only sign an agreement both the buyer and their agent are comfortable with.
 - See [here](#) for a helpful guide on written buyer agreements to share with your buyer.

- ✔ **Before signing the buyer agreement, be transparent about the realities of compensation and potential costs.**
 - Inform the buyer that they can request compensation for their agent from the seller or the seller's agent, but not all sellers or seller's agents may choose to pay buyer broker compensation.
 - Ensure the buyer understands their responsibility for any agreed upon compensation.
 - Inform the buyer that under current FHA rules, agent compensation cannot be financed through a mortgage.

- ✔ **Ensure your buyer understands all options, and advocate for the terms of the offer your buyer needs.**
 - REALTORS® have an ethical and fiduciary duty to serve the best interests of their clients.
 - The settlement explicitly preserves offers of compensation as a choice for consumers because it can mutually benefit buyers and sellers.
 - You can inquire about the existence of such offers and communicate the response to your buyer.
 - Additionally, even if a seller or their broker is not offering compensation, your buyer can choose to ask the seller to cover the buyer broker cost in the buyer's offer.

- ✔ **Know and follow state and local laws.**
 - There may be additional requirements, including those for certain types of agent representation, based on state law and local practice.

DON'TS WHEN WORKING WITH A BUYER

- ✘ **Don't misrepresent anything to a buyer, including the nature and purpose of the written buyer agreement.**
 - Written buyer agreements outline the services the agent will provide and what they will be paid for those services. The purpose and reason for these agreements must be accurately explained and presented to a consumer so that they can make an informed decision on how to proceed.
 - The [Code of Ethics](#) requires honest and truthful communications and representations (Article 12); to always protect and promote the interests of their client, and to treat all parties honestly (Article 1); and that all agreements related to a real estate transaction be clear and understandable (Article 9).
 - While some states legally require buyer agreements, many MLSs now require a written buyer agreement as a result of the NAR settlement and related practice changes, not a new law. Make sure your explanation of the requirement is accurate.

- ✘ **Don't attempt to "work around" the practice change requirements.**
 - When you agree with a buyer to certain work for a particular amount of compensation, you must do so in good faith.
 - Any compensation agreed to in the written buyer agreement must be "objectively ascertainable" under the settlement—this means compensation must be clearly defined (e.g., \$0, X flat fee, X percent, X hourly rate) and not open-ended.
 - Do not enter into agreements created to get around this requirement. For example, you should not enter into multiple agreements with a buyer at one

time for the same services or define compensation as whatever the seller or seller agent is offering as compensation.

- Potential amendments should be considered in the same light—you should not amend an agreement for the sole purpose of “matching” an offer of compensation that is greater than what you and your buyer agreed to. Any amendment must have a legal basis and a fully informed buyer that agrees to amend. Consult state contract law.
- Remember, the written buyer agreement is a legally binding document that commits you and the buyer.

✘ **Don't accept more compensation than what is provided for in the agreement with your buyer.**

- Under the NAR proposed settlement, buyer brokers cannot receive compensation for brokerage services from any source that exceeds the amount or rate in the agreement with the buyer.
- Do not accept “bonuses” or other compensation from a seller or any other source that is more than what is in your written buyer agreement.

✘ **Don't share your signed buyer agreement with competitors (unless required by state law).**

- Written buyer agreements contain your compensation and other confidential information that may be material to a transaction and critical to a successful negotiation on behalf of your buyer.
- Note that some MLSs may institute auditing programs to ensure compliance with written buyer agreement rules, but those MLSs should keep the written buyer agreement confidential. REALTORS® should fully comply with these requests and local MLS rules.
- However, some states require disclosing the agreed-upon buyer agent compensation to the listing agent at certain points in the process so please make sure to follow all state laws and regulations.

✘ **Don't limit the properties you show a buyer or steer clients away from properties based on offers of compensation.**

- Under NAR's Code of Ethics and MLS policy, steering buyers based on the amount of broker compensation is prohibited.
- REALTORS® must inform buyers about any home available that meets their criteria, regardless of whether (or how much) the seller or listing agent is offering compensation.
- A buyer should be in the driver's seat with respect to their search and the homes they wish to pursue.
- Agents should educate buyers on the pros and cons of each option available when looking at and making an offer on a property, including that buyers can ask sellers to pay for buyer broker compensation as part of the offer, even if there is no offer of compensation.
- Refusing to inform your client of properties because they are being sold by a broker, agent, or seller who is not offering compensation is inconsistent with these principles.

Consult your state and local REALTOR® association for detailed information about state and local law where you operate your business. For more helpful resources, please visit facts.realtor and explore our [Consumer Guide series](#) catered directly to home buyers and home sellers.