Written Buyer Agreements

Written buyer agreements benefit consumers because they clearly and transparently outline the services an MLS Participant will provide and how they will be compensated.
As of August 17, 2024, an MLS Participant “working with” a buyer is required to enter into a written agreement with the buyer prior to touring a home, including both in-person and live virtual tours. This resource provides information about what provisions must be included in the written agreement pursuant to the NAR settlement as well as other provisions that, while not required by the settlement, MLS Participants may consider addressing with their clients.

As you develop or refresh your agreement forms, keep in mind:

Agreement forms should account for the choice and optionality consumers and real estate professionals have when negotiating the terms of their relationship permissible under state law.
Agreement forms should give the real estate professional and consumer the ability to efficiently memorialize the relationship based on the transparent and clear conversation they have when deciding to work together.

Mandatory Provisions

Pursuant to paragraph 58(vi) of the NAR proposed settlement agreement, written buyer agreements must:

Specify and conspicuously disclose the amount or rate of any compensation the MLS Participant will receive from any source, or how this amount will be determined;
The amount of compensation must be objectively ascertainable and may not be open-ended (e.g., “buyer broker compensation shall be whatever amount the seller is offering to the buyer”);
Include a statement that MLS Participants may not receive compensation from any source that exceeds the amount or rate agreed to with the buyer;
Disclose in conspicuous language that broker commissions are not set by law and are fully negotiable; and
Include any provisions required by law.
Other Considerations When Entering Into a Buyer Agreement:
While not required by NAR policy changes, there are several other considerations and contractual provisions for MLS Participants, associations, MLSs and other forms providers to consider when creating or updating written buyer agreements:

Format: Agreements should be organized, written in understandable terms for all parties, and use a clear, readable font size. MLS Participants are cautioned to avoid pre-filling key terms like length of the agreement and compensation, and to avoid changing provisions without legal advice.
Types of Representation: To maximize broker and buyer choice, consider all types of written buyer agreements permitted by state law, including short form, limited service, agency, non-agency, transactional, customer, among others.
Broker Services: Agreements should clearly articulate the services the MLS Participant will provide buyer.
Consumer Protection: Agreements should clearly disclose all contractual obligations of the buyer, duties of confidentiality owed to the buyer, the Equal Housing Opportunity statement. Consider including warnings regarding wire fraud as well as video and audio recording by sellers while touring a home for sale. MLS Participants may also notify consumers that they are providing real estate brokerage services and advise buyers to seek appropriate professional services from inspectors, lenders, attorneys, tax advisors and title agents, among others.
Term and Termination: MLS Participants and buyers can negotiate and agree to the duration of the