

Massachusetts **FAQs**



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Q: What are the potential risks in publishing offers of compensation on an MLS?

The NAR Settlement releases NAR members from claims by those home sellers that listed a home on an MLS that paid a commission from December 17, 2016, up until the class notice date of August 17, 2024. Importantly, the NAR Settlement does NOT protect a member if they choose to engage in the same or similar practices that were at issue after August 17, 2024. Additionally, the NAR practice changes are meant to address the practices that were at issue to prevent future liability if they comply with the changes.



Q: Do I still need to use a Buyer Representation Agreement if the MLS I'm using does not require them?

Yes. To be covered by the release contained in the NAR Settlement, REALTORS[®] must follow the practice changes outlined in the Settlement, which includes the use of written buyer representation agreements.



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Q: Can I list offers of compensation on a third-party website that is not an MLS?

No. Directly or indirectly establishing, maintaining, or contributing to a platform of offers of compensation from multiple Brokers to Buyer Brokers or other Buyer representatives is prohibited. Listing Brokers may publish offers of compensation only on their listings on their individual brokerage website.



Q: What if I am a participant in an MLS that allows Seller compensation?

To protect members from future liability, MAR recommends not using any field that calls for the publishing of compensation on an MLS. MAR's updated Exclusive Right to Sell Listing Agreement does not include a Seller of compensation.



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Q: Do I still need to use the Agency Disclosure form if I also have a Buyer Agreement?

Yes. The use of a Buyer Representation Agreement does not relieve REALTORS[®] from the state requirement to use the Massachusetts Mandatory Licensee-Consumer Relationship Disclosure form. As a reminder, the form is now available in eight languages.



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Q: What is a Seller Offer of Compensation?

A Seller's Offer of Compensation is a negotiable term of transaction just like all other terms. Essentially, they are just advertisements of a Seller's willingness to negotiate to include the seller compensating the Buyer Agent as a term of the purchase. Because the Seller's offer of compensation is negotiable, it will need to be memorialized either in the contract to purchase.



Q: As a Broker, can I still make an Offer of Compensation to Buyer Brokers?

Yes. Offers of compensation help make professional representation more accessible, decrease costs for home Buyers to secure these services, increase fair housing opportunities, and increase the potential Buyer pool for Sellers. The NAR Settlement removes these offers from the Multiple Listing Service but does not prohibit Brokers from making offers of compensation off the MLS with the knowledge and consent of the Seller.



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Q: What should I do with existing agreements with Buyers and Sellers?

Most existing agreements can be supplemented with MAR's new Disclosure-Existing Exclusive Buyer Agency Agreement and Disclosure-Existing Exclusive Right to Sell Listing Agreement available in MAR's forms library. These forms provide the necessary disclosures to keep existing agreements in compliance with NAR's new practice changes. Existing Buyer Agreements that do not clearly state the amount of compensation in a manner that is objectively ascertainable and not open-ended should be re-executed using MAR's new Exclusive Buyer Agency Agreement.



Q: Can I agree with a Buyer client to limit the Buyer Representation Agreement to just specific properties?

Yes. The MAR form includes an area for additional terms that can be used to further define the scope of the agreement, which could be by identifying specific properties, specific towns, or any other agreed to provision.



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Q: Can Brokers send emails to other Brokers to share offers of compensation on their own listings?

Yes. So long as the email is not sent by an MLS system, the email complies with the NAR Settlement.



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Q: What should we do if we are using an MLS that still allows compensation fields?

To limit your liability and maintain protection from the NAR Settlement, MAR recommends that REALTORS[®] not enter compensation into any MLS.



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Q: Will the new forms be available on Remine Docs and other forms providers?

Yes. MAR has submitted all the new and edited forms to all licensed forms providers, and most are already available for use.



Q: The changes to the purchase & sale seem to allow for the Listing Broker to pay the Buyer Broker. I thought this was prohibited.

Broker-to-Broker compensation remains legal and a benefit to Buyers and Sellers as they navigate transactions. The practice change prohibits Broker-to-Broker compensation from being communicated via the MLS.



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Q: Will MAR now require members or associations to use MAR forms?

No. Brokerages can use whatever forms and contracts they prefer. MAR provides forms that comply with state and federal law and the NAR Settlement as an option for our members.



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Q: I was under the impression sharing commission with cooperating brokers was completely off the table, why is that an option in the new forms?

Compensation from a Listing Broker to a Buyer Broker is still a permissible business practice and a permissible choice of the Seller. If compensation is paid from the Listing Broker to the Buyer Broker pursuant to the terms of the Listing Agreement, the payment will flow from the Listing Broker to the Buyer Broker and therefore should be reflected in the Purchase and Sale Agreement.



Q: Can a Seller instruct the Listing Broker to put wording into the MLS remarks that the Seller is willing or open to Seller credits to Buyer for closing costs and more specifically the amount?

Pursuant to NAR practice changes, Seller concessions are still permissible on an MLS so long as they are not marked specifically for Buyer Broker compensation. Remember that any reflection of a Seller concession is not a firm offer and must be accounted for specifically in any offer and accepted by the Seller.



Q: Can brokerages still hold escrow deposits as an escrow agent and disburse funds to another brokerage upon a sale?

Yes. The holding of escrow deposits is done pursuant to the underlying agreement. If the brokerage is identified as the escrow agent, they would be responsible to pay out the escrowed deposit funds according to the Settlement statement.



Q: Can we have a sign rider that shows compensation?

Yes. This is in line with reflecting an offer of compensation on your own website or printing it on a marketing flyer you have available when showing the property.



Q: Should we remove current offers of Buyer Broker compensation, or will MLS remove them automatically?

Our suggestion is remove any offer of compensation, reflected on any MLS, by August 17, 2024.



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Q: If my Buyer and I sign an agreement for more compensation than the Seller is willing to cover, can I waive the additional compensation that would otherwise be due from the Buyer?

This would be at the discretion of the managing Broker. These agreements can be renegotiated or modified with the consent of both contracting parties.



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Q: What do we do if we are a facilitator? Do we need an agreement signed?

Yes. As a facilitator you are still doing work for the Buyer in order to complete the transaction. This is a relationship that does not rise to agency, but still involves efforts done on the Buyer's behalf to complete the sale.



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Q: Is the Authorization to Offer Buyer Broker Compensation Addendum a required form?

If the Seller has decided to have the Listing Broker make an Offer of Compensation to the Buyer Broker this must be in writing and MAR recommends the use of the MAR Exclusive Right to Sell Listing Agreement and the Addendum. If the Seller does not want the compensation offered, then it is not used.



Q: Should we have current listing agreements re-signed?

Not necessarily. MAR's Disclosure-Existing Exclusive Right to Sell provides the required disclosures to current agreements. If the terms of your current contract are outside of the scope of the proposed changes, then you may want to sit back down with your client and discuss potential amendments. Either way, you should take this opportunity to explain the changes to your client.



Q: Can a listing brokerage have a policy that sets an amount of compensation for their services as a business practice?

Yes. Any brokerage can have their own business practices and present those services, practices, costs, strategies, etc. to the customer they are trying to earn business from. The Seller is free to hire that Broker or move on to a different one.



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Q: Can we add a line for compensation to the listing agreement that would be due to a Listing Broker if there is an unrepresented Buyer as purchaser?

Yes. If this is your business practice, you can use the Additional Provisions portion of the listing agreement to define the terms of that agreement.



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Q: Can the Buyer's Agent be compensated by both the Buyer and the Seller or Listing Broker?

Yes. The Buyer Broker can be compensated by a number of sources so long as that is consented to by their client and the amount does not exceed what it is that the Buyer and Broker have agreed to.



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