



NAR Settlement and Idaho REALTORS® Forms Update Frequently Asked Questions

(Updated 7/19/24)

The following Frequently Asked Questions are intended address queries that Idaho REALTORS® has received from our members regarding the industry and practice changes going into effect following the NAR Settlement, as well as changes to Idaho REALTORS® forms in response to those changes. If you have additional questions, please submit them to our office at Questions@idahorealtors.com, or visit NAR's FAQ page at <https://www.nar.realtor/the-facts/nar-settlement-faqs>.

Effective Date Change

1. When will the practice changes take effect?

NAR's settlement requires REALTORS® to implement the practice changes on or before August 17, 2024.

Additionally, to comply with NAR's mandatory national MLS policies, REALTOR® MLSs must also implement the practice changes by August 17.

Compensation and Representation Agreements

2. I have an old version of the purchase and sale agreement (RE-21) signed by the buyer and it has been accepted by the seller prior to August 17th when the practice changes take effect. What should I do?

If the purchase and sale contract (RE-21) is executed before MLS policy change (eliminating references to compensation), the buyer broker should be able to rely upon the offer of compensation even if closing occurs after the date of the policy change.

But if the RE-21 is not executed before the date the participant's MLS implements the policy changes (eliminating reference to compensation), the offer on an MLS will not be valid and buyers and buyer brokers may wish to protect themselves in writing with the listing broker or seller through the RE-16C or including the offer of compensation in an amended and updated RE-21.

3. Does the NAR Standard of Practice 16-16 prohibit the negotiation of buyer broker compensation in a buyer's purchase offer?

No. A buyer can always ask their buyer broker to make it a term of an offer to purchase that the seller pay certain compensation to the buyer broker.

Standard of Practice 16-16 prohibits a REALTOR® from attempting to modify the terms of a listing agreement through the terms of an offer because the listing agreement is a contractual matter between the seller and the listing broker. However, the seller and the listing broker may independently choose to amend the listing agreement or take any other action they deem appropriate based on the seller's negotiations with the buyer. Standard of Practice 16-16 also prohibits a REALTOR® from delaying or withholding delivery of a buyer's offer while attempting to negotiate a buyer broker compensation.

Written Buyer Agreements

4. When should I use the new RE-5 (or alternatively the RE-14)?

When working with a potential buyer you must have either a signed RE-5 or RE-14 before you show them a home.

Working with a buyer occurs when one provides brokerage services to a potential buyer—such as identifying potential properties, arranging for the buyer to tour a property, or performing or facilitating negotiations on behalf of the buyer. Touring or showing a home means when the buyer and REALTOR enter a house, including when the REALTOR working with the buyer enters the home to provide a live OR virtual tour to a buyer not physically present. A home is defined as a residential property consisting of not less than one nor more than four residential dwelling units.

5. If a REALTOR® enters into a non-agency relationship with a buyer, is a buyer written agreement still necessary?

Yes, regardless of whether it is an agency or non-agency relationship, the obligation is triggered once the REALTOR® works with and takes that buyer to tour a home.

6. If I am at an open house as the listing agent or on behalf of the listing agent am I required to get a signed RE-5 or RE-14 from everyone touring the home?

No. In this case, since the REALTOR® is only working for the seller, and not the buyer, the REALTOR® does not need to enter into a written agreement with every potential buyer at the open house.

This could change; however, if the buyer asks you to show them a different home or they ask you to represent them in the purchase of the open house you are showing on behalf of the seller. In either scenario a RE-5 or RE-14 would be required before you showed them any properties.

7. Are written buyer agreements required when listing agents talk with a buyer on behalf of a seller only or as subagents of the seller?

No. An agreement is not required because the REALTOR® is performing work for the seller and not the buyer.

8. The practice change requiring written agreements with buyers is triggered by two conditions: it only applies to REALTORS® “working with” buyers and is triggered by “touring a home.” What does it mean to be “working with” a buyer?

The “working with” language is intended to distinguish REALTORS® who provide brokerage services to a buyer—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from REALTORS® who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.

If the REALTOR® is working only as an agent or subagent of the seller, then the participant is not “working with the buyer.” In that scenario, an agreement is not required because the participant is performing work for the seller and not the buyer.

Authorized dual agents, on the other hand, work with the buyer (and the seller).

9. What does it mean to tour a home?

Written buyer agreements are required before a buyer tours a home.

Touring a home means when the buyer and/or the REALTOR®, or other agent, at the direction of the REALTOR® working with the buyer, enter the house. This includes when the REALTOR® or other agent, at the direction of the REALTOR®,

working with the buyer enters the home to provide a live, virtual tour to a buyer not physically present.

A “home” means a residential property consisting of not less than one nor more than four residential dwelling units.

10. REALTORS® may not receive compensation for services from any source that exceeds the amount or rate agreed to in the buyer agreement. Does this mean that brokerages can only have one agreement with the buyer?

No. NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
- The term of the agreement (e.g., one day, one month, one house, one zip code).
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

Compensation continues to be negotiable and should always be negotiated between REALTORS® and the buyers with whom they work.

Enforcement of Written Buyer Agreements

11. Who will be responsible for enforcing the written agreements and ensuring all parties follow this new practice change?

MLSs will be responsible for enforcing the rule regarding written agreements, like MLSs enforce other existing rules.

12. Will MLSs be required to get a copy of buyer written agreements?

No, an MLS is not required to receive a copy but can request it as a matter of their local enforcement.

Practice Changes and MLS Information

13. Can a listing broker communicate offers of compensation on a broker website which has an IDX or VOW feed?

Yes, MLS Participants may augment MLS data or data feeds with offers of compensation to buyer brokers or other buyer representatives for only listings of their own brokerage.

14. Can an MLS Participant use or share their MLS data or data feeds to establish or maintain a platform for offers of compensation from multiple brokers and buyer brokers or other buyer representatives?

No, use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited.

15. Can an MLS allow MLS listings to link to a listing broker's contact information (e.g., telephone number, broker's preferred communication method)?

Yes.