



# HOW TO DO BUSINESS NOW: must-know answers to your top questions

UPDATED AUGUST 28, 2024

REQUIRED AGREEMENTS & DISCLOSURES		
#1	I have a listing. Does the buyer's broker have to provide me with a copy of the written agreement with their buyer?	NO! As a listing broker/agent, it is not your job to enforce the new <a href="#">MLS Rules</a> and the practice changes required by the NAR <a href="#">settlement</a> . And just like the buyer's broker does not have an automatic right to see your listing agreement, you do not have the automatic right to see their buyer's broker agreement. If you suspect that a buyer's broker is not following the MLS Rules, then you need to report that to <a href="mailto:mls@miamire.com">mls@miamire.com</a> .
#2	I am working with a buyer. The listing broker/agent will not show the property unless I provide a copy of the written agreement with my buyer. Is this allowed?	NO! This is a violation of the <a href="#">MLS Rules</a> . If you suspect that a buyer's broker is not following the MLS Rules, then you need to report that to <a href="mailto:mls@miamire.com">mls@miamire.com</a> . If you are a listing broker/agent, you cannot condition a showing upon proof or confirmation of a written buyer agreement.
#3	Are buyer broker agreements required for rentals?	NO! The new <a href="#">MLS Rules</a> require a written agreement before working with <i>buyers</i> or showing them residential properties. Not <i>tenants</i> . That said, antitrust laws apply to all aspects of real estate, not just residential sales, so you are free to make the unilateral and independent business decision to implement various representation agreements with tenant customers. NAR <a href="#">FAQs #97-100</a> )
#4	Are buyer broker agreements required for commercial deals?	NO! NAR clarified that the <a href="#">settlement</a> and practice changes it requires are focused on <i>residential</i> transactions, not commercial transactions or leases. (NAR <a href="#">FAQs #97-100</a> ) Check out MIAMI's <a href="#">legal update</a> on the answers to frequently asked questions on the impact of NAR's settlement on commercial real estate.
#5	What if I have a personal relationship with my customer or they are a REALTOR® member – do I still need a written buyer broker agreement?	YES! (NAR <a href="#">FAQs #58-79</a> )
#6	What if I have an existing listing agreement or buyer broker agreement that was signed before August 17? Do I need to get my customer to sign a new one?	It depends. For all existing listing or buyer representative agreements that were signed before August 17, 2024, you must make sure that the existing agreements contain the required: (1) compensation disclosures; and, (2) conspicuous, objectively ascertainable provisions regarding amounts and sources of compensation. If your agreements do not have compensation disclosures, you can provide a compensation disclosure form ( <a href="#">MIAMI, Florida REALTORS®</a> , and <a href="#">NAR</a> all have templates). If your listing or buyer broker agreement does not have conspicuous, objectively ascertainable provisions regarding amounts and sources of all compensation, you can amend the existing agreement or sign a new agreement altogether.
#7	What do I do if the seller or listing broker is offering compensation above what I agreed to receive in my written buyer broker agreement?	You need to amend your buyer broker agreement after consulting and negotiating with your customer. Forms are available in <a href="#">Form Simplicity</a> . Remember, any compensation is, was, and will continue to be fully negotiable and is not set by law.
#8	On my buyer broker agreement, can I list varied compensation amounts based on the property types? For example, developer-	YES, but only if your broker allows this. The buyer may approve multiple compensation options on the buyer broker agreement, such as one for "developer owned properties" in the "OTHER" section of the Exclusive Buyer Broker Agreements ( <a href="#">EBBA-7tn, -7nr, -7sa, and -7tb</a> ), Showing Agreement ( <a href="#">SA-4</a> ), or as an



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	owned inventory vs. resale inventory?	amendment. Remember, compensation must be “objectively ascertainable” and cannot be “open ended” or a range. (NAR <a href="#">FAQ #75</a> ) Check out MIAMI’s <a href="#">toolkit</a> on best practices for developer-owned properties.
#9	Are compensation agreements mandatory?	NO, but they are certainly recommended and encouraged as a best practice if you want to get paid. You cannot rely on MLS listings to confirm any compensation that was offered to a cooperating broker.
#10	What if my buyer tells me they only want to see properties where the seller or listing broker is willing to compensate the buyer’s broker?	BEWARE! Filtering out or restricting listings that are communicated to your customers based on the existence or level of compensation offered to the cooperating broker and/or the name of a broker or agent is strictly prohibited. What you CAN do: first, negotiate and execute a buyer broker agreement so the expectations of you and your buyer customer are clear. Next, do what you always do, which is search for all properties that fall within your customer’s criteria. Then, disclose <i>all</i> of those properties to your customer. Your customer can then make an informed decision about which properties to see or submit offers. (NAR <a href="#">FAQs #93-96</a> )
#11	Can I add a provision to the buyer broker agreement where my customer will agree to only see properties with offers of compensation?	NO! This would be “filtering” and it is prohibited. It would also violate the <a href="#">MLS Rules</a> , MIAMI’s <a href="#">Antitrust Policy</a> , and the <a href="#">NAR settlement agreement</a> , as this practice could be considered boycotting certain business models that do not offer compensation, steering, or price fixing. (NAR <a href="#">FAQs #93-96</a> )

**OPEN HOUSES, COMPENSATION, AND ADVERTISING**

#12	If I am listing broker/agent handling an open house on behalf of my seller customer, do I need to get a written agreement signed by an unrepresented buyer before they tour the home?	NO -- if the buyer is unrepresented, if you are the listing broker/agent, and you are only facilitating a transaction for the seller, then you do not need to enter into a written agreement with the buyer before you provide the buyer access to a home. (NAR <a href="#">FAQs #65 and 83</a> ) Bonus tip: check out MIAMI’s <a href="#">toolkit</a> on authorized broker relationships in Florida.
#13	What else do I need to do for open houses?	If you are hosting an open house on behalf of the seller as a transaction broker, you need to ask whether the buyer is a party to an exclusive representation agreement before you provide any substantive services to that buyer (like writing a purchase offer). NAR COE, Article 16, <a href="#">SOP 16-13</a> . If the buyer is unrepresented and simply tours the home during an open house, a written agreement is likely not required. (NAR <a href="#">FAQ #83</a> ) However, if you are a transaction broker and you end up facilitating the transaction for both the seller and the buyer, then yes, you will need a written buyer agreement before showing the buyer a home. (NAR <a href="#">FAQ #84</a> )
#14	How do I find out if a listing broker is offering compensation?	Call, text, email, and/or check the listing broker’s websites and social media.
#15	If I am a listing broker, how may I advertise any offers of compensation to cooperating brokers?	NOT on the MLS! But you CAN advertise any offers of compensation for your listings on your website alongside an IDX feed. You can also advertise any offers of compensation on signs, riders, flyers, social media, texts, emails, and phone calls.
#16	Can I put a link to my website in broker remarks?	YES – but only if that link does not take you directly to an offer of compensation, if any. For example, you are not allowed to put a website link in broker remarks, which, with a single click on the link or MLS listing, would immediately display an offer of compensation. (NAR <a href="#">FAQ #45</a> )
#17	How do I get paid on an offer of compensation from the seller or listing broker?	The best way to memorialize an offer of compensation is by putting it into a contract. Florida REALTORS® released two versions of a compensation agreement on <a href="#">Form Simplicity</a> (and modification agreements) – (1) Compensation Agreement: Seller to Buyer’s Broker (CASB-1), and, (2) Compensation Agreement: Seller’s Broker to Buyer’s Broker (CABB-1).
#18	Can I do “driveway consultations” with buyers?	It depends. Yes, you can meet with buyers for the first time outside of the home. But, if the buyer tours the home and you do not have a written buyer agreement signed, and you later end up working with that buyer, you run the risk of violating the MLS Rules and the practice changes required by the NAR settlement agreement. If the buyer does not tour the home, but you decide to send them a video of the home after you tour it, that is a violation of the MLS Rules.

**SELLER-TO-BUYER INCENTIVES**



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#19	What are seller-to-buyer incentives?	"Seller-to-buyer incentives," sometimes referred to as "seller concessions," are contributions from the seller to the buyer to help with various expenses a buyer may encounter as they approach the closing table. These are fully negotiable. What sellers, buyers, and their respective agents choose to include as part of the transaction is a unilateral and independent business decision. Get the <a href="#">toolkit</a> on seller-to-buyer incentives to expand opportunities for your customers.
#20	Can concessions be disclosed in the remarks?	YES! You are allowed to disclose what "seller-to-buyer incentives" are being offered, if any, including the total dollar amount, in remarks or broker remarks. NO percentages will be allowed. You CANNOT use "concessions" as a substitute for "commission" or "compensation," as all offers of compensation are prohibited on the MLS.
#21	Can seller-to-buyer incentives be used to compensate the buyer's broker?	YES! The buyer may elect to use seller-to-buyer incentives to compensate their own broker – as long as the buyer broker agreement and any other agreements (like a compensation agreement) all comply with the <a href="#">MLS Rules</a> and the <a href="#">NAR settlement</a> . Remember, seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative. (NAR <a href="#">FAQ #92</a> )
<b>FORMS, TOOLKITS, AND RESOURCES</b>		
#22	Which forms should I use? And how should I use them?	It depends. MIAMI cannot tell you which forms to use and how to use them because this is largely dependent on your own business practices, which must be decided unilaterally and independently. Florida REALTORS® is responsible for drafting and updating the forms. Contact the <a href="#">Florida REALTORS® Legal Hotline</a> (407-438-1409) for specific questions about their forms. You should also watch the Florida REALTORS® webinars on <a href="#">listing agreements</a> and <a href="#">buyer broker agreements</a> . That said, there are two important notes on the current forms. MIAMI does NOT recommend using the Property Pre-Touring Agreement (PPTA-1). While all business decisions must be made unilaterally and independently, MIAMI does not recommend using the PPTA-1 because, among other reasons, it may not comply with the terms of the <a href="#">NAR settlement agreement</a> and poses a risk of violating antitrust laws. In addition, for the Showing Agreement (SA-4) and the Exclusive Buyer Brokerage Agreements (EBBA-7tn, EBBA-7nr, EBBA-7sa, and EBBA-7tb), MIAMI strongly recommends deleting the last sentence of these agreements ("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."). This is because it conflicts with the requirements of the <a href="#">NAR settlement agreement</a> for buyer broker agreements (see pp. 36-37) and for agreements with sellers (see p. 37).
#23	Where can I get more information??	Your hub for ALL resources, education, toolkits, and updates is at <a href="http://miamirealtors.com/facts">miamirealtors.com/facts</a> . Use the <a href="#">toolkits</a> : <ul style="list-style-type: none"> <li>• <a href="#">How to do business NOW: checklist to get ready for 8/17</a></li> <li>• Slides: how to do business now (<a href="#">ENGLISH</a> and <a href="#">SPANISH</a>)</li> <li>• <a href="#">Toolkit: compensation models</a></li> <li>• <a href="#">Toolkit: seller concession options</a></li> <li>• <a href="#">Toolkit: best practices for developer-owned properties</a></li> <li>• <a href="#">Toolkit: Florida authorized broker relationships</a></li> <li>• <a href="#">Toolkit: best practices for data feeds, websites, and compensation</a></li> <li>• <a href="#">MIAMI's Antitrust Policy</a></li> <li>• <a href="#">NAR: written buyer agreements 101</a></li> <li>• MIAMI's <a href="#">legal update</a> on the NAR settlement agreement</li> <li>• MIAMI's <a href="#">legal update</a>: impact of NAR's settlement on commercial</li> <li>• <a href="#">NAR settlement agreement</a></li> <li>• Antitrust Audit Checklist (<a href="#">ENGLISH</a> and <a href="#">SPANISH</a>)</li> <li>• NAR settlement frequently asked questions (<a href="#">ENGLISH</a> and <a href="#">SPANISH</a>)</li> <li>• Florida REALTORS®: <a href="#">Let's talk listing agreements</a> webinar</li> <li>• Florida REALTORS®: <a href="#">Let's talk buyer broker agreements</a> webinar</li> </ul>



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