

eXp Florida FAQ's

Modified, September 13, 2024

These were some of the most commonly asked questions we received in our training. We have also included some of the NAR FAQ's at the bottom.

- 1. What if I had an accepted offer after August 17th but still needed to get a Buyer broker Agreement signed by the buyer? May the seller still pay me?**
 - a. No, in the absence of a BBA, the buyer has not authorized you to get compensated, and you cannot accept any compensation from the seller.
 - b. See your broker team if this occurs.
- 2. What if I turn in a pending contract after the Settlement Date and forget to get the Buyer Broker Agreement signed? Can eXp pay me?**
 - a. No, we cannot pay you any compensation since the buyer has not authorized you to get paid. This would be similar to being the listing broker without a listing agreement.
 - i. Even if the seller agrees to the buyer-broker compensation and signs the form, the buyer still has to authorize you to get paid.
 - ii. NOTE: Many Title Companies or Closing Attorneys are unwilling to forward the compensation to eXp if we cannot provide an BBA.
 - iii. The Broker team is now notified whenever a buyer's agent turns in a pending contract without a BBA. We are still asking the agents to get one signed, preferably before closing. Though this does not comply with the NAR settlement, it is still an acknowledgment from the buyer that you may get paid.
- 3. What if the seller offers more compensation than my BBA and forwards a signed agreement to pay me? May I accept the difference?**
 - a. Part of the settlement stated that you may not accept anything higher than the amount agreed upon in your BBA with the buyer. Any modification to increase the compensation in the BBA should have been agreed upon between you and the buyer before they went under contract.
 - b. If you receive a Seller-to-Broker or Broker-to-Broker form from the listing agent/seller with a higher compensation amount, cross it out, place the correct amount per your BBA, initial, sign, and date it, and then return it to the seller for their signature.
 - c. There will be instances where the Buyers-Broker believes they should be compensated higher than initially agreed in the BBA. If the buyer and agent agree, an amendment to the BBA may be signed to increase the compensation amount.
- 4. What is the Seller's Agree to only part of the compensation as a credit to the Buyer's Broker, but my BBA has a higher amount? Can I collect the difference?**
 - a. Yes, you may collect the difference from the buyer. Ensure your buyer knows this and instruct the closing agent of the difference in charge to be charged as the close of escrow
 - b. If you agree to reduce your BBA to match the amount the seller is paying, it is suggested that when you modify your BBA, it is only for that specific contract address.

- c. NOTE: If you do not modify the commission on your BBA, the Transaction Settlement Team (TSA) will send out the Commission Disbursement Authorization (CDA/DA) in the amount on your BBA, not the compensation agreement signed by the seller.

5. What is the best method for conveying to a buyer that the seller has agreed to reimburse them for the compensation outlined in the buyer's agent agreement?

- a. First, ensure this language is added to the purchase and sale agreement when making the offer.
- b. If an external agreement is needed, such as a Direct Compensation To Buyers Broker (eXp) or Compensation Agreement - Seller to Buyers Broker (FAR), ask the listing broker for a copy and present it with your offer. If the forms are not provided, fill out one of the above and forward it with the offer.
- c. A new form you may include is a request for a *Credit from the Seller to the Buyer: FF. Credit Related to Buyers Broker Compensation*. This Rider should be included as an attachment to your purchase agreement, and you would not need any other form or compensation agreement attached.
- d. FYI. Both eXp and the FAR EBBA have language that states that if any other party compensates the buyer's broker, the compensation will be applied as a credit towards the buyer's obligation to the buyer's Broker.
- e. At the top of page two of the Buyer Broker Representation Agreement (eXp), there is great language to help you discuss their option if they want to request a credit for the buyer's broker fee.

6. Is a Buyer Broker Agreement required to be signed before writing a purchase agreement or touring homes, and does it need to be sent to the MLS?

- a. Yes, you need to get a BBA before working with a buyer. This would include touring or virtual touring a home with the customer or starting to ask confidential questions.
- b. The BBA could also be a Single Property Agreement, Showing Agreement, or Property Tour Agreement.
- c. You may not have to send the forms to MLS, but they should be ready to send if your MLS requests them.

7. Can compensation be offered or advertised in MLS listings, and how should it be handled if it was previously included in listing verbiage?

- a. The MLS has removed all compensation offers from the MLS, but any language you may have added should also be removed immediately.

8. Can the listing and buyer forms be used for rentals, and do the new rules apply to existing properties?

- a. The NAR Settlement did not include commercial, Vacant Land, or Rentals. However, compensation has been removed from the MLS entirely, and it would be wise to discuss with your customer how you will be paid.
- b. You should still get an EBBA with your tenant/buyer to agree on compensation.

- c. It is also wise to include your request for compensation or credit to the buyer/tenant if they instruct you to do so. Remember, the buyer/tenant may also choose to pay you directly.
- d. A form is available when requesting the landlord buyer the buyer's broker compensation: Compensation Agreement—Owner/Listing Broker to Tenant's Broker. You may be forwarded to the listing agent to provide to the landlord.

9. As a listing broker, can we collect both the listing broker and buyer broker compensation from the seller and offer broker-to-broker compensation?

- a. No, we **Do Not** offer Broker-to-Broker Compensation; we have, however, **approved Seller-to-Buyer Broker compensation** as a means to pay the Buyer's Broker. It is company policy at eXp that if our seller wishes to compensate a Buyer's Broker, we use either the Direct-to-Buyers Broker Compensation (eXp) or Compensation Agreement-Seller Direct-to-Buyers Broker (FAR). We will not work as the pass-through from the seller to the cooperating real estate broker but have the seller pay them directly.

10. What if I am the Buyer-Broker, and the Listing Agent sends me a Broker-to-Broker Form to sign to receive my compensation? Is this allowed?

- a. At eXp, we prefer that you forward a Direct Compensation to the Buyer Broker form or Compensation Agreement- Seller to Buyer Broker to the listing broker and have it signed by the seller.
- b. If the Listing Broker is unwilling or unable to change and only chooses to pay eXp Broker-to-Broker after you forward the Direct Compensation sent, eXp, as the buyer's broker, will accept the Buyer-to-Broker compensation. We do not want to harm our buyer customers to get the home they desire or cause you not to get paid.

11. What should be done if a seller refuses to sign the Compensation seller-to-buyer broker agreement, and when should the direct compensation document be sent?

- a. These two forms serve the same purpose; you will only use one.
- b. A New document: GG. Seller's Agreement with Respect to Buyer's Broker Compensation can now be used with your offer to ensure the seller signs the compensation agreement. If they are unwilling to sign, the buyer may cancel the agreement.

12. How can agents legally explain the buyer-broker agreement and other necessary forms to clients without giving legal advice?

- a. Provide them with a copy of the forms to review. Reading or highlighting what is there would not be considered giving legal advice, similar to examining a listing contract with a seller.
- b. You should advise them to seek an attorney's advice if they need clarification on the agreement.

13. What happens if a seller refuses to pay the buyer's broker, and how should this be reflected in the contract?

- a. Per the settlement, the seller is not obligated to pay the buyer's broker; however, the buyer could pay the Buyer's Broker.

- b. Even if the seller does not compensate the buyer's broker, the buyer may still instruct you to request it in the purchase and sale agreement. The seller would have the option to say yes or no.
- c. Remember, if the price is right, the seller may agree to pay the buyer's broker on behalf of the buyer. It is all negotiable.

14. What is the difference between using eXp forms and Florida forms, and does eXp have a transaction broker disclosure?

- a. eXp has created more consumer-friendly forms. You can choose which forms to use when working with your customers.
- b. The Brokerage Relationship Disclosures are available in eXp Forms in Skylope Forms. They have been attached to the forms that require them. Reminder: The ones attached are for Transaction Broker notice; if you are acting as a Single Agent, you need to use the Single Agent with a transition to Transaction Broker (FAR Form).

15. Is the Property Pre-Touring Agreement (PPTA) FAR Form still usable under the new regulations?

- a. Yes, but it is not exclusive. If compensation is not filled in, you would only be entitled to get paid if you sign another form of a BBA; otherwise, there is no offer of compensation to you.
- b. I would suggest using the Single Property Buyer-Broker Agreement - eXp Florida or Showing Agreement (MEBBSA) - FAR

16. What obligations does a listing agent have if a buyer approaches them directly but cannot or will not pay compensation?

- a. Suppose a buyer approaches you and does not want representation. If they choose a no-brokerage relationship, you may allow them to preview the property in your role as a listing agent without a BBA. Showing the property is the entire scope of your work. You are not to assist them or write a contract for them; they need to have an attorney or present you with the offer to forward to your seller.
- b. If they want you to go beyond showing the property to them, they would need to sign a BBA, and you would facilitate the transaction with limited representation for both the seller and the buyer as a transaction broker.
- c. If they agree to work with you as a transaction broker, you can explain that they may request that the seller pay you on their behalf if they do not have the funds to pay you. Again, a BBA or Single Property Showing Agreement would be required in this scenario.

17. How should a buyer's agent handle situations where a buyer cannot pay compensation and the seller will not agree to pay it either?

- a. If, after attempting to increase the price paid to the seller to roll in the cost of your compensation, they cannot agree on how you will be compensated, the buyer should seek a more affordable home. You are not expected to work for free.

18. If an agent performs an open house on someone else's listing, are they still required to use the necessary forms?

- a. No, when holding an open house, it is presumed you are working for the seller. Once you start to discuss a purchase of that home or confidential information with the buyer, you should get a BBA signed.

19. Can the seller's compensation to the buyer's broker be included in closing costs or other buyer-related expenses?

- a. There are several ways a buyer may receive a credit. One is a credit directly from the seller to the buyer to use as they wish. Two, the buyer may request that the seller pay the buyer's broker directly at the close of escrow.
- b. Or, the buyer may request the seller credit closing cost concessions on behalf of the buyer to be applied towards the buyer's closing costs, pre-paid, tax prorations, and any lender-allowable expenses.
- c. Remember: If compensation for the buyer's broker and closing cost assistance are requested, the requests in the additional terms should be separated.

20. Are there any additional requirements or considerations for using transaction broker disclosures with the new rules?

- a. Brokerage Relationships (Agency) have stayed the same; only the compensation method has changed.

21. How should compensation be presented in purchase contracts under the new rules?

- a. If the buyer requests that you ask the seller to pay the buyer's broker, there are several ways to ask. One is to pay the compensation directly to the buyer's broker at the close of escrow.
 - i. The buyer requests that the seller pay the Buyer's Broker directly %X of the purchase price at the close of escrow. Upon acceptance of the offer, the seller and buyer shall execute an external compensation agreement. There is a form you would add to your offer when using the above language: *GG. Seller's Agreement with Respect to Buyer's Broker Compensation*.
- b. Two, it can be a credit the seller pays the buyer at closing to help fulfill their contractual obligation to the buyer broker.
 - i. The seller shall credit the buyer \$XXX at the close of escrow to satisfy the buyer's contractual obligations with the Buyer's Broker. Note: There is now a Rider that replaces the language above (i). It can be attached to your purchase agreement: *FF. Credit Related to Buyers Broker Compensation*.
- c. Or, the buyer can ask for a sum in concessions as a credit paid by the seller directly to the buyer at closing to use for whatever expenses they have.
 - i. Seller shall credit buyer \$XXX in closing cost concessions at the close of escrow.
- d. Reminder: If you ask the seller to pay the buyer's closing costs, that should be separate from any compensation the buyer requests.
 - i. Seller shall pay \$XXX (or % of the purchase price) towards buyers closing costs, pre-paid, tax prorations, or any other lender allowable expenses.

22. How should I include buyer-broker compensation in the Exclusive Authorization and Right to Sell - eXp Florida, since there is no section for this?

- a. Suppose the seller instructs you to offer compensation to the buyer's broker. In that case, the following language should be used: The seller shall provide an additional X% of the purchase price to the buyer's broker at the close of escrow with a full-price offer.

- i. You must also include if the seller authorizes you to disclose this information to any other broker. If there is no authorization, you should not disclose the amount.
- ii. Note two things: One, it stated additional, which reflects that it is above what you are being paid for your fee (listing agent). Two, it also noted a full-price offer, which would eliminate the seller's accountability for this amount if the offer is less than the full price.
- iii. The FAR Exclusive Right of Sale, Listing Contract already has a section (10-B) for compensation and authorization.

23. If a transaction has already started under the old rules, do agents need to update any forms or documentation to comply with the new regulations?

- a. That transaction is grandfathered in if you have a pending contract or pending listing.
- b. However, it may be wise to update the Listing Agreement and the EBBA to include the new settlement language. A Modification to the Listing Agreement form or a Buyer Agreement will accomplish this.
- c. Consider modifying your listing agreement and explaining how things have changed for the seller. Make sure to exclude the current offer from your change. It is best to discuss it now rather than at the time if the offer falls through. They have the right to modify their offer of compensation on any future purchase agreements.

24. Can the listing and buyer forms provided by eXp be customized or combined with FAR forms, or must they be used as-is?

- a. It is best to refrain from modifying; often, when one condition is modified, it will affect another in the contract. It is best to speak to a broker directly for assistance in determining the intent of the modification.
- b. It is always best to use the forms that were created to complement each other, whether they are the eXp or FAR Forms.

25. What specific language should be used in contracts to ensure compliance with the new compensation rules?

- a. The newest forms that already have this pre-printed information should be used. If you have an older version of, use the amendment or modification to update with the compensation/commission changes.

26. If the seller or the listing broker offers a bonus or financial incentive in addition to the broker compensation offer, can the buyer broker accept the extra compensation?

- a. The buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the buyer broker agreement with the buyer.

27. What if the new document says “Broker/Sales Associate”? Should I send it in for the broker to sign?

- a. No, if it gives the option of one or the other, you may sign and initial where indicated.
- b. If it only states Broker or Broker and Sales Associate, you must have these documents sent for the broker's signature. It should be sent to FL.Sign@exprealty.net e-sign ready.

- c. Reminder: since these documents are new to you, if you still need a contract reviewed, please send them in a “review” format to FL.Sign@exprealty.net or come to the Florida Concierge. eXp.World/FLBrokerRoom

The below Q&A's are from NARS FAQs

- 1. Can buyers and buyer brokers rely on an offer of compensation that was on an MLS before the effective date of the MLS policy changes?**
 - a. If the sales contract is executed before the MLS policy change, the buyer broker should be able to rely upon the offer of compensation even if closing occurs after the policy change. However, if a sales contract is not executed before the date the participant's MLS implements the policy changes, the offer on an MLS will not be valid. Buyers and buyer brokers may wish to protect themselves in writing with the seller through a Compensation Agreement- from the seller to the buyer broker (FAR) or by including the offer of compensation in the sales contract.
- 2. Can a broker tell a potential buyer the amount of broker commissions and explain who is paying those commissions?**
 - a. Yes. In fact, REALTORS® must provide this information to potential buyers under NAR's Code of Ethics.
 - b. Written buyer agreements, required by the NAR practice changes implemented on August 17, 2024, will also outline that MLS Participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.
 - c. The NAR Settlement also requires that “to the extent that such a REALTOR® or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined.” (Added 5/29/2024)
- 3. Can a listing broker explain to a seller that the buyer will know who is paying the commissions?**
 - a. Yes, Articles 2 and 12 of NAR's Code of Ethics apply equally to brokers working with sellers.
 - b. The listing broker should explain to her client the benefits and costs of the various types of marketing that can be done for a listing and how potential buyers might respond to such marketing—including any buyer costs that the seller may offer to pay.
 - c. A listing broker should inform the seller about the costs the buyer will incur, how the buyer might react to those costs, and how the seller can market a house considering the buyer's fees. Still, a listing broker must not tell a seller that a broker will steer buyers based on the amount that the broker is compensated. (Added 5/29/2024)
- 4. Should active listing or buyer agreements—meaning there is no accepted offer—entered into before the MLS policy changes go into effect on August 17, 2024 be amended to include a conspicuous disclosure that compensation is not set by law and is entirely negotiable?**
 - a. MLS Participants must make this disclosure. Active agreements can be amended, or a separate disclosure can be provided to satisfy the requirement. (Added 5/29/2024)

5. The practice change requiring written agreements with buyers is triggered by two conditions: it only applies to MLS Participants “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 MLS Participants who provide full or limited brokerage representation or services for the buyer (including transaction brokerage)—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 MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing unrepresented buyer access to a house they have listed.
- If the MLS Participant is working only as an agent 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.

6. Does the requirement for a written agreement with buyers mean that MLS Participants and buyers must enter into a written agency agreement?

- No. MLS Participants and buyers will still be able to enter into any type of professional relationship permitted by state law.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., single-agency, non-agency, 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).

7. If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?

- No. In this case, since the MLS Participant is only working for the seller, and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.

8. Are written buyer agreements required when listing agents only talk with a buyer on behalf of a seller?

- No. An agreement is not required because the participant is performing work for the seller and not the buyer.

9. Are written buyer agreements required when MLS Participants perform ministerial acts?

- Yes. The obligation to enter into a written buyer agreement is triggered just prior to an MLS Participant taking a buyer to tour a home, regardless of what other acts the MLS Participant performs for the buyer.
- An MLS Participant performing only ministerial acts—and who has not taken the buyer to tour a home—is not working with the buyer and therefore does not yet need to enter into a written buyer agreement. (Updated 7/23/24)

10. Do the written buyer agreement requirements change my state's disclosure requirements to an unrepresented buyer?

- a. No, you must still comply with all your state and local legal requirements. MLS policies and rules are subject to state and local laws and regulations.

11. MLS Participants 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?

- a. No. The practice change empowers buyers and brokers to negotiate and agree to services and compensation that work for them. MLS Participants should work with consumers to ensure they fully understand the options available. Compensation continues to be negotiable and should always be negotiated between MLS Participants and the buyers with whom they work.
- b. At times, a new or amended buyer agreement may be appropriate, and the buyer and broker may agree to amended terms. However, amended agreements must also meet the requirements of the practice changes. The practice changes must be implemented fully and in good faith in the service of promoting consumer empowerment, choice, and healthy competition.
- c. NAR policy does not dictate:
 - i. What type of relationship the professional has with the potential buyer (e.g., single-agency, non-agency, transactional, customer).
 - ii. The term of the agreement (e.g., one day, one month, one house, one zip code).
 - iii. The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - iv. The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

(Updated 7/31/2024)

12. Should active buyer agreements entered into before the MLS policy change be amended to make sure any compensation is not open-ended and is objectively ascertainable?

- a. Yes. MLS Participants working with a buyer after the effective date of the policy should take steps to ensure that the buyer has agreed to the necessary terms required by the settlement agreement.

Transaction Brokerage:

These questions address how the practice changes impact transaction brokerage. Please review all the FAQs to see how the practice changes impact your circumstances.

13. Does the written buyer agreement requirement apply to transaction brokers?

- a. Yes. A transaction broker must have a written buyer agreement when they work with a buyer. The “working with” language is intended to distinguish MLS Participants who provide brokerage representation or services for the 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 MLS Participants 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.

b. A written buyer agreement is required before a buyer “touring a home.” An MLS Participant “working with” a buyer can enter into the written buyer agreement at any point but must do so by no later than prior to the buyer “touring a home,” unless state law requires a written buyer agreement earlier in time (See FAQ “What does it mean to tour a home?”). (Added 8/8/24)

14. Is a transaction broker who facilitates a transaction for a buyer considered to be “working with” a buyer?

a. Yes. (Added 8/8/24)

15. Is a written buyer agreement required if a transaction broker who facilitates a transaction for a seller provides an unrepresented buyer with access to a home?

a. No. The transaction broker would not be considered working with a buyer in that situation and therefore a written buyer agreement would not be necessary unless required by state law. (Added 8/8/24)

16. 41. If a transaction broker is facilitating the transaction for both the seller and the buyer, is a written buyer agreement required prior to touring a home?

a. Yes. The MLS Participant is working with the buyer (and the seller), so a written buyer agreement is required. (Added 8/8/24)

17. Do the practice changes affect any state disclosure requirements for transaction brokers?

a. No. You must still comply with state and local legal requirements. MLS policies and rules are always subject to state and local laws and regulations. (Added 8/8/24)

Concessions:

18. Is there an NAR MLS policy about seller concessions?

a. No, MLSs will continue to have local discretion on seller concessions. This includes determining what local rules to have about seller concessions, except under the settlement an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

19. Can an MLS have a Yes/No seller concession field that indicates whether a seller is offering any concession?

a. Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.

20. Is an MLS required to have a seller concession field?

a. No, it is a matter of local discretion for each MLS.

21. If my MLS removes the compensation field, can I choose to publish my cooperative commission offer in the agent remarks?

a. No. The new rule would prohibit offers of compensation on an MLS.
b. Anything that appears to be a workaround will cause you to receive a fine.

22. Can MLSs allow decimal points to be used for seller concessions?

- a. Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.
- b. Most MLS have now removed or revised the concession field.
- c. At eXp our position is that you do not indicate the amount of any concession offered by the seller in the MLS

23. Will seller concessions communicated on an MLS be binding on the seller?

- a. As a general matter, seller concessions usually aren't binding until they are established in an executed contract such as a listing agreement or a purchase contract.

24. Can the seller concession be a total sum or the percentage of the purchase price?

- a. This is a matter of local discretion. But an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

BONUS

Be in the know!

I had an agent ask what form they should use when working with the buyer and then the seller. I decided to share my response.

Buyers Agent Choices

When working with a buyer, you have a couple of choices. I will group them into two options. You will only need to choose one.

- When working with a buyer early, you can use one of these forms before signing an entire Buyer Broker Agreement. 1. Showing Agreement (FAR), or 2. Single property showing (eXp)
- You may also get a Buyer Broker Agreement signed immediately or as soon as you can get a commitment from the buyer. 1. Exclusive Buyer Broker Agreement (FAR): this form is exclusive to anything the buyer buys. 2. Buyer Broker Representation Agreement (eXp): This form should protect you for any home you show the buyer.

Choices as a Seller's Agent

- For the Seller side, choose one of the two forms. 1. Exclusive Right of Sale Agreement (FAR). 2. Exclusive Authorization and Right to Sell (eXp)

Buyers Agent Payment Request Forms Choices

- There are three options to request payment for the buyer's agent compensation; only use one. 1. Direct Compensation Agreement (eXp) 2. Compensation Agreement - Seller to Buyer Broker (FAR). 3. New Form: CR-6_FF Credit Related to Buyers Broker Compensation (FAR). In this third form, the seller will credit the buyer to pay their agent themselves. For the first two, the Seller pays the Buyer's Broker directly.