

NAR Rule Changes and Their Impact on Buyers

Article

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New rules from the National Association of Realtors (NAR), effective August 17, 2024, are reshaping real estate transactions. Stemming from a federal court ruling in October 2023, these changes aim to increase transparency and fairness in real estate transactions. While they affect both buyers and sellers, buyers face particularly noteworthy shifts in the real estate purchasing process.

Key Changes Affecting Buyers

1. Mandatory Written Buyer-Broker Agreements (BBAs)

The introduction of mandatory BBAs fundamentally alters the initial stages of the buying process. Buyers are now required to enter into written agreements with brokers before touring properties, a change that demands careful consideration and early decision-making.

These agreements can take various forms, including single property agreements or broader representation agreements. The scope of these BBAs is crucial, as it defines the nature and exclusivity of the buyer-broker relationship. Buyers should be aware that signing multiple BBAs could potentially result in owing commissions to multiple brokers for a single purchase, underscoring the importance of understanding and carefully selecting their representation.

2. Buyer-Set Broker Commissions

Under the new rules, buyers are now responsible for setting their broker's commission in the initial BBA. This shift brings both increased flexibility and new financial considerations to the forefront of the buying process.

While commissions remain negotiable, the commission which is paid to the buyer's broker in a typical commission split with a seller's broker ranges up to about 3% of the purchase price. Buyers should approach this

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negotiation armed with knowledge of market rates and a clear understanding of the services their broker will provide. It's important to note that current lending regulations do not allow broker commissions to be included in mortgage financing, which could potentially increase upfront costs for buyers. Hopefully, regulations will change as all parties (sellers, buyers, brokers, lenders and the federal government) adjust their practices to the new normal.

To mitigate these out-of-pocket expenses, buyers may need to explore strategies such as negotiating with sellers to offset these costs by absorbing them into the property price. This new dynamic adds another layer to the already complex negotiation process in real estate transactions.

3. Removal of Compensation Information from MLS Listings

The removal of broker compensation information from NAR-affiliated Multiple Listing Services (MLS) introduces a new level of opacity to the process. Buyers and their brokers will need to take additional steps to understand potential compensation structures for each property of interest.

This change may lead to more direct communication between parties and could potentially impact how buyers approach and evaluate listings. It emphasizes the importance of having a trusted broker who can navigate these new waters effectively.

Key Considerations for Buyers

In light of these changes, buyers should approach the buying process with heightened awareness and preparation:

1. **Careful Review of BBAs:** When presented with a Buyer-Broker Agreement, buyers should pay close attention to several key elements. The scope and exclusivity of representation should be clearly understood – is the agreement for a single property or a broader search? Are there any restrictions on working with other brokers? Commission structures and any retainers should be thoroughly examined and negotiated. Buyers should also be aware of the agreement's duration and any termination clauses. Of particular importance are provisions for commission offsets, which could help mitigate out-of-pocket expenses.
2. **Commission Negotiations:** The responsibility of setting broker commissions is now also a concern of and responsibility for buyers. This requires research into current market rates and a clear understanding of the services the broker will provide. Buyers should be prepared to negotiate these rates, balancing the value of the broker's services with their own financial considerations.
3. **Financial Planning:** The potential for increased upfront costs due to out-of-pocket broker commissions necessitates careful financial planning. Buyers should factor these costs into their overall budget for purchasing. Exploring options for offsetting these costs in negotiations with sellers becomes an important strategy in this new landscape.
4. **Understanding of Broker Agreement Terms:** Buyers should be particularly aware of any clauses that might extend the term of their agreement with a broker beyond the stated end date. These clauses could have significant financial implications if not properly understood and managed.

Conclusion

The NAR rule changes mark a significant shift in the real estate buying process. While they aim to increase transparency, the new rules also introduce new complexities that buyers must navigate. By understanding these changes and their implications, buyers can better protect their interests and make informed decisions throughout the process.

We recommend seeking professional legal advice to effectively navigate these changes and ensure a successful real estate transaction in this new landscape.

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