

FORMS UPDATE

06.18.24 | LORI LEVY & DAVID JONES



Sitzer/Burnett v. NAR

Federal Case – Missouri

Home sellers claimed real estate commissions inflated due to MLS Offer of Compensation Rule

NAR MLS Rules – August 17!

1. Eliminate and prohibit any requirement of offers of compensation in the MLS between listing brokers or sellers to buyer brokers or other buyer representatives.
2. Eliminate and prohibit MLS Participants, Subscribers, and sellers from making any offers of compensation in the MLS to buyer brokers or other buyer representatives.
3. Require the MLS to eliminate all broker compensation fields and compensation information in the MLS.
4. Require the MLS to not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.
5. Prohibit the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use must result with the MLS terminating the Participant's access to any MLS data and data feeds.
6. Reinforce that MLS Participants and Subscribers must not, and MLSs must not enable the ability to filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent.
7. Require compensation disclosures to sellers, and prospective sellers and buyers.
8. Require MLS Participants working with a buyer to enter into a written agreement with the buyer prior to touring a property

Texas REALTORS Forms – June 24!

<https://www.texasrealestate.com/members/legal-and-ethics/forms/form-changes/>

- Amendment to representation agreements (TEMPORARY)
- Updated residential representation agreements and amendments
- SHORT FORM Residential Buyer/Tenant Representation Agreement
- Addendum to TREC Contract
- Updated broker compensation agreements
 - Between Brokers
 - Between Broker and Owner

AMENDMENT TO REPRESENTATION AGREEMENT

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This Amendment modifies Texas REALTORS® real estate representation agreements to comply with certain National Association of REALTORS® Multiple Listing Service policies. This Amendment may be used with the following representation agreements with a version date before 06-24-24: Listing Agreements TXR 1101, TXR 1102, or TXR 1201 and Buyer/Tenant Representation Agreement TXR 1501.

On or about _____, Client and Broker entered into a Texas REALTORS® representation agreement.

Effective _____, Client and Broker amend the above-referenced representation agreement as follows:

A. For All Representation Agreements

1. **Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested, by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees.**

B. For Listing Agreements

1. "Client" means the Seller or Landlord concerning the following Property _____
2. **Paragraph 8A includes payment of compensation to the other broker working with a buyer or tenant. Client authorizes Broker to compensate the other broker as indicated in Paragraph 8A.**
3. Paragraph 8B is deleted. Fees stated in Paragraph 8A are payable regardless of whether the other broker is a participant in the MLS in which the Listing is filed.

C. For Buyer/Tenant Representation Agreements

1. **Broker is prohibited from receiving compensation for brokerage services from any source that exceeds the amounts stated in the representation agreement.**

NEW FORM

TXR 2701

Amendment to Representation Agreement

5. BROKER COMPENSATION:

Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees.

(Complete either 5A or 5B only)

A. Broker's Fee (with compensation for other broker):

This Paragraph 5A includes payment of compensation to the other broker working with a buyer. Seller authorizes Broker to compensate the other broker as indicated below.

(1) When Earned and Payable, Seller will pay Broker *(insert total amount for Broker and other broker)*:

- (a) _____% of the sales price or \$ _____.
- (b) _____.

(2) From amounts stated in 5A(1) above, Broker will pay the other broker the following fees if the other broker procures a buyer that purchases the Property:

- (a) if the other broker represents the buyer: _____% of the sales price or \$ _____; and
- (b) if the other broker is a subagent: _____% of the sales price or \$ _____.

B. Broker's Fee (without compensation for other broker):

(1) When Earned and Payable, Seller will pay Broker *(insert amount to be paid to Broker only)*:

- (a) _____% of the sales price or \$ _____.
- (b) _____.

Note: Seller Paying Buyer's Expenses. In addition to paying the above Broker's fees, a buyer may request Seller to contribute an amount towards buyer's expenses, such as buyer's broker fees or other closing costs.

See Paragraph 11F for Broker's authority regarding such contributions.

Paragraph 5

TXR 1101 EXCLUSIVE RIGHT TO SELL

Paragraph 11

- F. Seller does or does not authorize Broker to share with other brokers and prospective buyers that Seller will consider contributing an amount towards buyer's expenses, such as buyer's broker's fees or other closing costs. **Seller is not obligated to pay any specific amount and has sole discretion to negotiate payment of buyer's expenses with the buyer under the sales contract.**



**SELLER'S AUTHORIZATION TO DISCLOSE AND ADVERTISE
CERTAIN INFORMATION**

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CONCERNING THE PROPERTY AT _____

Seller authorizes Broker to disclose and advertise the following information concerning the Property to prospective buyers, other brokers, and on Multiple Listing Services (MLS) *(for example, insert information regarding amounts Seller would consider contributing towards buyer's expenses, Seller's reasons for placing the Property on the market, any conditions of sale, or phrases such as "terms are negotiable," or "bring all offers")*:

NOTE: All disclosures and advertisements must be in compliance with local, state, and federal laws as well as TREC rules, the NAR Code of Ethics, and MLS policies.

Seller's Printed Name

Seller's Printed Name

Seller's Signature

Date

Seller's Signature

Date

TXR 1412, Seller's Authorization to Disclose and Advertise Certain Information



Effective _____, Owner and Broker amend the above-referenced Listing as follows:

- A. The Listing Price in Paragraph 3 of the Listing is changed to: \$_____.
- B. The date the Listing ends in Paragraph 4 of the Listing is changed to: _____.

- C. **(TXR 1101 and TXR 1201 only)** The Broker's Fee is changed to Paragraph 5A1 or 5B1 as follows:
 - (a) _____% of the sales price or \$_____.
 - (b) _____.

- D. **(TXR 1101 and TXR 1201 only)** The compensation paid to the other broker in Paragraph 5A2 is changed as follows:
 - (a) if the other broker represents the buyer:** _____% of the sales price or \$_____; and
 - (b) if the other broker is a subagent:** _____% of the sales price or \$_____.

- E. Owner instructs Broker to cease marketing the Property on _____ and to resume marketing the Property on: (1) receipt of further instructions from Owner; or (2) _____.
- The Listing is not terminated and remains in effect for all other purposes.

- F. Paragraph(s) _____ are changed as follows:

Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees.

TXR 1404 Amendment to Listing

TXR 1417, Representation Disclosure

Broker/Broker Firm Name: _____ License No.: _____

Broker's Associate's Name: _____ License No.: _____

A. Texas law (Section 1101.558, Occupations Code) requires a real estate license holder who represents a party in a proposed real estate transaction to disclose, orally or in writing, that representation at the license holder's first contact with:

- (1) another party to the transaction; or
- (2) another license holder who represents another party to the transaction.

B. Broker represents the following party:

- Seller/Landlord: _____
- Buyer/Tenant: _____

C. A real estate license holder, while acting as an agent, is a fiduciary. The primary duty of the license holder is to represent the interests of their client. The license holder must treat other parties to a transaction honestly and fairly, however, the duty to their client is primary.

The undersigned persons acknowledge there is no agency relationship with Broker as of the date of this disclosure:

7. BROKER COMPENSATION:

Broker compensation or the sharing of compensation between brokers is not set by law nor fixed, controlled, recommended, or suggested, by the Association of REALTORS®, MLS, or any listing service. Broker compensation is fully negotiable. Brokers independently determine their fees. Broker is prohibited from receiving compensation for brokerage services from any source that exceeds the amounts stated in this agreement.

A. **Broker's Fee:** When Earned and Payable, Client will pay Broker *(Complete all that apply):*

(1) (Purchases) _____% of the sales price or \$_____.

(2) (Leases) _____% of one month's rent or _____% of all rents to be paid over the term of the lease or \$_____.

B. **Source of Compensation:** Broker will seek to obtain payment of the fees specified in Paragraph 7A first from the seller, landlord, or their agents. **If such persons refuse or fail to pay Broker the amount specified, Client will pay Broker the amount specified less any amounts Broker receives from such persons.**

C. **Earned and Payable:** Broker's compensation is Earned when: (1) Client enters into a contract to buy or lease property in the market area; or (2) Client breaches this agreement. Broker's compensation is Payable, either during the term of this agreement or after it ends, upon the earlier of: (1) the closing of the transaction to acquire the property; (2) Client's breach of a contract to buy or lease a property in the market area; or (3) Client's breach of this agreement. If Client acquires more than one property under this agreement, Broker's compensation for each property acquired are Earned as each property is acquired and are Payable at the closing of each acquisition.

D. **Acquisition of Broker's Listing (Intermediary Transactions):** If Client acquires a property listed by Broker, any compensation Broker offers to other brokers in Broker's listing agreement with the owner will be credited towards Broker's Fee specified under Paragraph 7A.

TXR 1501, "Long Form"

TXR 1501, "Long Form"

- E. Additional Compensation: In addition to Broker's Fee specified under Paragraph 7A, Broker is entitled to the following compensation.
- (1) Construction: If Client uses Broker's services to procure or negotiate the construction of improvements to property that Client owns or may acquire, Client ensures that Broker will receive from Client or the contractor(s) at the time the construction is substantially complete a fee equal to: _____.
 - (2) Service Providers: If Broker refers Client or any party to a transaction contemplated by this agreement to a service provider (for example, mover, cable company, telecommunications provider, utility, or contractor) Broker may receive a fee from the service provider for the referral.

Notice Regarding Bonuses and Other Compensation. In addition to Broker's Fee specified under Paragraph 7A, seller, landlord, or their agent may offer Broker other compensation, such as a bonus, if Client purchases or leases certain properties. Broker will disclose the specific amount of other compensation offered to Broker. Broker may not receive other compensation unless authorized by Client in writing. Client authorization may be made by amending this agreement (use TXR 1505).



RESIDENTIAL BUYER/TENANT REPRESENTATION AGREEMENT – SHORT FORM

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- 1. PARTIES: This Agreement is made between...
2. APPOINTMENT: Client appoints Broker as Client's real estate agent...
3. DEFINITIONS: In this Agreement, "acquire" means to purchase or lease real property...
4. TERM: This Agreement begins on... and ends at 11:59 p.m. on...
5. BROKER OBLIGATIONS: Broker must comply with minimum duties as required by law...
6. CLIENT OBLIGATIONS: Client must: (a) work exclusively through Broker...
7. BROKER COMPENSATION:

A. Broker's Fees: When Earned and Payable, Client will pay Broker (Complete all that apply):
(1) (Purchases) % of the sales price or \$
(2) (Leases) % of one month's rent or % of all rents to be paid over the term of the lease or \$

- B. Earned and Payable: Broker's fees are Earned when Client enters into a contract...
C. Source of Payment: Broker may receive compensation from the seller, landlord, or their agents...
D. Escrow Authorization: Client authorizes, and Broker may instruct, any escrow or closing agent...
8. INTERMEDIARY: Client does or does not authorize Broker to act as an intermediary...

Broker compensation is not set by law nor fixed, controlled, or recommended by the Association of REALTORS® or MLS. Broker compensation is fully negotiable. Broker is prohibited from receiving compensation for brokerage services from any source that exceeds the amounts stated in this Agreement.

Broker's Printed Name License No.
Broker's (or Broker's Associate's) Signature Date
Broker's Associate's Name, if applicable License No.

Client's Printed Name
Client's Signature Date
Client's Printed Name
Client's Signature Date

NEW FORM

TXR 1507 "Short Form"



Effective _____, Client and Broker amend the Agreement as follows:

A. The "market area" in Paragraph 3 is redefined as _____
_____.

B. The date the Agreement ends specified in Paragraph 4 is changed to _____.

C. **(For TXR 1507 only)**
(1) Brokers Obligations in Paragraph 5 is changed to Full Services or Showing Services.
(2) Client does or does not authorize Broker to act as an intermediary under Paragraph 8.
Note: To change Broker's Fees, also complete Paragraph D below.

D. **(For TXR 1501 and TXR 1507 only)** Broker's Fees in Paragraph 7A are changed to *(Complete all that apply)*:

(1) **(Purchases)** _____% of the sales price or \$_____.

(2) **(Leases)** _____% of one month's rent or _____% of all rents to be paid over the term of the lease or \$_____.

E. **(For TXR 1501 and TXR 1507 only)** **Bonuses and Other Compensation**: In addition to Broker's Fees listed in Paragraph 7A, Broker will receive other compensation from seller, landlord, or their agent in an amount equal to \$ _____ if Client purchases or leases the following property: _____
_____ (property address).

F. Client instructs Broker to cease providing services under the Agreement on _____ and to resume providing services on: (1) receipt of further instructions from Client; or (2) _____

_____.
The Agreement is not terminated and remains in effect for all other purposes.

G. Paragraph(s) _____ are changed as follows:

TXR 1505, Amendment to Buyer/Tenant Representation Agreement



**ADDENDUM REGARDING BROKERS' FEES
TO CONTRACT CONCERNING THE PROPERTY AT:**

(Address of Property)

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Note: This addendum should not be used with the Farm and Ranch Contract (TREC 25-15; TXR 1701).

- A. ADDENDUM CONTROLS:** If any part of this addendum conflicts with a provision in the contract, this addendum will control.
- B. FEES:** Cash fees as specified in this addendum will be paid in _____ County, Texas.
- C. LISTING BROKER'S FEE:** Seller shall pay Listing Broker the fee specified in a separate written representation agreement between Seller and Listing Broker.
- D. OTHER BROKER'S FEES:** Other Broker's fees will be paid as specified below, and Buyer shall pay any remaining amount due to Other Broker under a separate written representation agreement between Other Broker and Buyer. *(Check all that apply)*

- (1) Listing Broker shall pay \$_____ or _____% of sales price as contained in a separate written compensation agreement between Listing Broker and Other Broker (such as TXR 2402).
- (2) Seller shall pay: *(Check one box only)*
 - (a) \$_____ or _____% of sales price as contained in a separate written compensation agreement between Seller and Other Broker (such as TXR 2401).
 - (b) \$_____ or _____% of sales price towards Other Broker's fees. (Note: Use this option only if there is no separate written compensation agreement between Seller and Other Broker.)

Amounts in (1) and (2)(a) are for informational purposes only and do not change compensation listed in separate written compensation agreements. Any amount listed in (2)(b) creates a new obligation for Seller.

- E. AUTHORIZATION:** Seller and Buyer authorize Escrow Agent to pay Listing and Other Broker at closing in accordance with this addendum or other separate written compensation agreements.

BROKER FEES ARE NOT SET BY LAW AND ARE FULLY NEGOTIABLE. This addendum confirms or creates an obligation for the payment of broker fees. CONSULT AN ATTORNEY BEFORE SIGNING. TREC rules prohibit real estate brokers and sales agents from giving legal advice. READ THIS FORM CAREFULLY.

Buyer's Printed Name

Seller's Printed Name

Buyer's Signature

Date

Seller's Signature

Date

Buyer's Printed Name

Seller's Printed Name

Buyer's Signature

Date

Seller's Signature

Date

NEW FORM

TXR 2406

Addendum

Regarding Brokers' Fees

TXR 2401 Compensation Agreement Between Broker and Owner

TXR 2402 Compensation Agreement Between Brokers



TXR 2405 Referral Agreement Between Brokers

In Paragraph 3:

3. TERM: This Agreement begins on _____ and ends at 11:59 pm on _____.

In Paragraph 4:

C. Transactions: Referring Broker will be entitled to the fees stated in this Agreement in connection with:

(Check one box only)

- one transaction during the Term.
- multiple transactions during the Term.

TAKE AWAYS

- On June 24 all forms vendors will have these updated and new forms posted for your use.
- You can use these updated and new forms even if your MLS has not removed cooperative compensation yet.
- Use TXR 2701 on August 17 to update any representation agreements that are on pre June 24 versions to ensure compliance with the new requirements.
- TREC contracts are not changing at this time. They may be updated later.
- All compensation for brokerage services you will receive needs to be clear and authorized by your client.

Legal Hotline 512-480-8200

www.texasrealestate.com