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PERSONAL FINANCE

The New Etiquette of Negotiating With Your Real-Estate Agent

What buyers should look out for in agent agreements

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Shopping for a home now requires a knack for negotiation and a lot more due diligence.

After a landmark settlement the National Association of Realtors, or NAR, reached over commissions, home buyers are responsible for negotiating their agent's commission. This means most hopeful home buyers will need to sign a contract with an agent even before touring a property.

In the past, buyer's agents were usually compensated after closing by the seller. So, while most buyers hired an agent, they didn't have to negotiate the agent's fee. Sellers may still agree to cover the commission, but there is no guarantee. Buyers can always choose another house if the seller won't cover the fee.

Agents and buyers are still learning the steps of this new dance. Just how much agents are willing to negotiate remains unclear and could vary widely depending in part on where you live. The going rates are similarly still being ironed out.

That uncertainty makes it important for buyers to review contract terms carefully before casually signing and consult a lawyer if unsure, consumer advocates say. At a minimum, ask around about the most common rates in the area.

The agreement should specify how much your agent will get paid—it cannot be a range. In the past, buyers agents typically received around 2.5% or 3% of the home's sale price from the home seller. Buyers should consider how much work they need or expect the agent to do and find out as part of the negotiation.

The payment can be a percentage of the home's sale price or a flat fee reflecting the work expected of the agent, such as \$5,000 for a \$500,000 house, said Doug Miller, a Minnesota lawyer who has advocated for lower commissions. That would be cheaper than paying a 3% commission of \$15,000 on that same house.

And remember buyers, you do have the option of going without an agent.

“No buyer's agent I've met with yet has been able to articulate why they're worth their fee nor fully explain the legal contract they asked me to sign as the potential buyer just seeking to view a house,” said Marty Martin, a North Carolina lawyer who is currently house hunting in the state.

How Commissions Used to Work and How They Work Now

In the past: The seller's agent splits the commission with the buyer's agent.

1. When listing a house for sale for \$500,000, **the seller** agrees to pay the **seller's agent** a percentage of the sale price, often 6%.



\$500,000 PRICE
\$30,000 COMMISSION

2. The **buyer** agrees to buy the house for \$500,000.



3. When the sale closes, the **seller's agent** gives part of the commission (often 3%) to the **buyer's agent**.



Now: The money to pay the buyer's agent is negotiated by the buyer.

1. When listing a house for sale, **the seller** agrees to pay a **seller's agent** a certain amount. The seller can decide to offer to pay the buyer's agent too.



2. The **buyer** and the **buyer's agent** agree on a price for the agent's services.

3. The **buyer** agrees to buy the house.



4. The money to pay the **buyer's agent** can come from the **seller's agent**, from the **seller** or from the **buyer**, depending on what was negotiated.



Source: staff reports

Commission

Realtors can't collect more than the amount that is specified in your agreement, even if the seller is offering more, said Tanya Monestier, a professor at the University at Buffalo School of

Law who has studied the NAR settlement.

For example, if your agreement says 2%, it doesn't matter if the seller is offering 3%. Some agents will try to modify contracts with buyers to try to get the full amount or to tack on other payments such as a \$1,000 administrative processing fee. Don't agree to pay those extra fees, said Monestier.

Buyers can always ask the seller for a credit to cover all or part of their agent's fee as part of the offer to buy the home, said Miller, the Minnesota lawyer.

If you already negotiated a fee of around 1%, you will likely save the seller about 2% in commissions, assuming the seller has offered 3%. If your offer includes a 1% seller credit and a competing buyer asks for 3%, your offer could become more attractive to the seller, he said.

The new terms of agreement

Some agents say they are uneasy about having to negotiate money and other details with potential buyers they just met. Others are worried about all the extra paperwork if buyers need to sign agreements for each home they tour.

"It's a clunky process," said Cindy Scholz, a real-estate agent in East Hampton, N.Y.



Real-estate agent Cindy Scholz is educating her clients about buyer's agent agreements. PHOTO: ALICE PRENA

The documents can vary between different brokerages and some have already made several revisions to their contracts, agents said.

Agent fees have always been negotiable, said a NAR spokesman.

But buyers in the past weren't usually a part of that negotiation. Now they may be able to pick and choose the services they want and should negotiate their agent's commission directly with that agent.

"It's going to feel like the Wild West for a while," said Rick Sharga, founder and CEO of CJ Patrick, a real-estate consulting firm.

As always, it probably pays to shop around rather than sign the first contract—and to have a lawyer review anything that you are uneasy about.

It is also best to negotiate in person, said Laura Fredricks, a lawyer who teaches classes and writes books on negotiation. Get clear on what you can afford before you start to negotiate, what services you would like the agent to provide and maintain a respectful tone, she said.

Time and place

Agents typically want buyers to commit to working with them to search for a house for a set period (often around three months) within a particular region.



Laura Fredricks, a lawyer who writes books on negotiation, suggests buyers negotiate with their agents in person instead of over the phone.

PHOTO: LUKE RATRAY PHOTOGRAPHY

Agreements may be limited to as little as one day or a single property. Some agents are offering simpler, shorter-term touring agreements initially before asking buyers to sign long-term contracts.

There is usually more flexibility with buyer's agent contracts than the four to six months sellers typically agree to before listing a property, said Pierre Debbas, a real-estate lawyer in New York City.

The agreement is binding. If a buyer signs an exclusive contract with an agent for 120 days, they

can't close on a sale with another two weeks later, Debbas said. The first agent could have grounds for a legal claim to get the full commission.

—*Nicole Friedman contributed to this article.*

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