



1

## New Forms • New Practices

**Existing Relationships**

- Seller Clients
- Buyer Clients
- Buyer Customers

**New Relationships**

- Seller Clients
- Buyer Clients
- Buyer Customers



2

## 2024 Forms Changes

Agents will NOT be Paid through MLS.

Sellers can offer to pay or agree to a request to pay the Buy Side fee. Sellers may also contribute to Buyer's Closing Costs.

Compensation will be created and confirmed in:

- ✓ Written Agency Agreements
- ✓ Written Purchase & Sale Agreements



3

## Talking Points



Increased Transparency for the Consumers

Sellers will discuss and agree to listing brokerage fees separately from cooperative compensation and as part of an overall marketing strategy.

Buyers will hire agents and work with facilitators with a clearly documented fee for service and be informed where compensation can come from.

4

## Talking Points

Brokerage fees traditionally have been part of the overall transaction. Agency compensation is collected at closing, when all the financial obligations are settled. This is not likely to change.

The Buyer and Seller will have more control and information about more options on each transaction regarding how those fees are set and distributed at the closing table.



5

## To Do: for Current Sellers

### Listings: Change of Conditions for Listings

Seller agrees that this Exclusive Listing Agreement is hereby modified as follows: Seller and FIRM hereby acknowledge that effective \_\_\_\_\_ 20\_\_\_\_, any offer of compensation except seller concessions shall be removed from all multiple listing services and Seller acknowledges and agrees that professional services fees are not set by law and are fully negotiable. To the extent not inconsistent with these two amendments, all other terms of the Exclusive Listing Agreement remain in full force and effect.

**CHANGE OF TERMS AND CONDITIONS / STATUS UPDATE**  
New Hampshire Association of REALTORS® Standard Form

1. Date: \_\_\_\_\_ MLS #: \_\_\_\_\_

2. The Undersigned being Seller(s) (including owner, heirs, personal representatives, administrators and assigns), of property known as \_\_\_\_\_, currently listed at \$ \_\_\_\_\_, hereby authorize the following change to be made part of the original listing agreement.

Change Price from \$ \_\_\_\_\_  Seller is hereby released from the Exclusive Right to Sell Listing Agreement

Change Expiration Date to \_\_\_\_\_  MLS has been explained to me and this property may be submitted to MLS and may be used for comparables.

Withdrawal from MLS  Other: \_\_\_\_\_

Withdrawal from Market \_\_\_\_\_

Work on Market \_\_\_\_\_

Initial Terms and Conditions: \_\_\_\_\_

DATE SELLER DATE

BY TITLE DATE

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6

## Seller Paid Fees



Listing agents may ONLY make offers of buy side compensation OUTSIDE of MLS.

Listing agents and co-operating brokers need to verify any compensation offered:

- ✓ In writing before showing/offer
- ✓ Between Seller and Buyer on the P&S
- ✓ Written commission statement

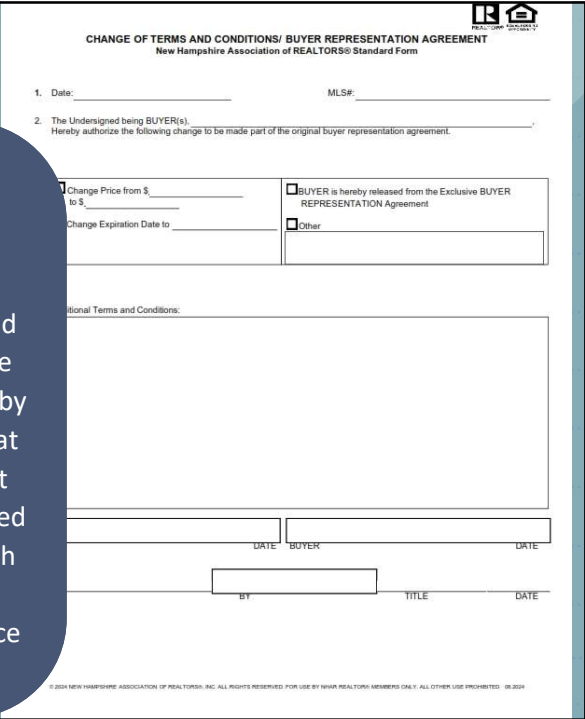
Our office will have an internal Google Doc to communicate co-op fees within KW Metro. The office staff will direct inquiries to the listing agent.

7

## To Do: Current Buyer Clients

Buyer Clients: Change of Conditions Buyer Representation Agreement

Buyer agrees that, as of \_\_\_\_\_ 20\_\_\_\_, this Exclusive Buyer Agency Agreement is hereby modified as follows: First, buyer and FIRM hereby acknowledge and agree that professional services fees are not set by law and are fully negotiable. Second, FIRM agrees that it will not receive compensation from any source that exceeds the professional services fee amount specified in this Agreement. To the extent not inconsistent with these two amendments, all other terms of the Exclusive Buyer Agency Agreement remain in full force and effect.



**CHANGE OF TERMS AND CONDITIONS/ BUYER REPRESENTATION AGREEMENT**  
New Hampshire Association of REALTORS® Standard Form

1. Date: \_\_\_\_\_ MLS#: \_\_\_\_\_

2. The Undersigned being BUYER(s),  
Hereby authorize the following change to be made part of the original buyer representation agreement.

Change Price from \$ _____ to \$ _____	<input type="checkbox"/> BUYER is hereby released from the Exclusive BUYER REPRESENTATION Agreement
Change Expiration Date to _____	<input type="checkbox"/> Other _____

Additional Terms and Conditions:

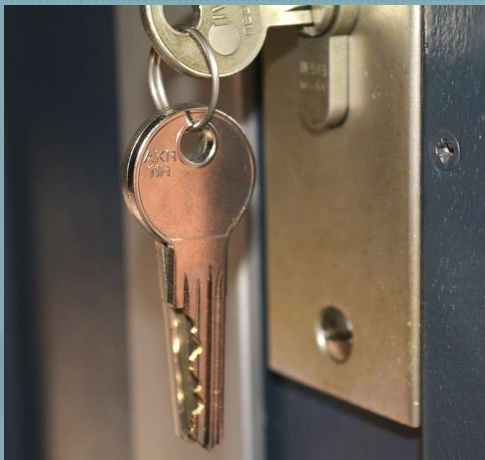
\_\_\_\_\_  
DATE BUYER DATE

\_\_\_\_\_  
BY TITLE DATE

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8

## Buyer Agent Fees



The new contracts lock in a specific fee - use a maximum. (Old agreement used to provide for a minimum fee.)

Buyers have always been responsible for their agent's compensation. Co-op fees have always been a credit towards the Buyer's obligation.

Excess fee will be forfeited. Buyers and Sellers may mutually negotiate credit amounts.

9

## Buyer Agent Fees

Buyer agents need to verify any agent compensation to be credited for the buyer:

- ✓ In writing before showing/offer
- ✓ Between Seller and Buyer on the P&S
- ✓ Written commission statement

Communicate with lender about Buyer paid fees and Seller paid fees/closing costs. Office will have an internal Google Doc to communicate co-op fees within KW Metro.



10

10



### Showing Your Listing

#### Unrepresented Buyers

- No buyer agreement needed
- New = \$ listing agency fee + any unrepresented buyer compensation
- Grandfathered = \$ per list agreement

#### At Open Houses

- No buyer agreement needed
- Continue to use OH Notice

#### Covering for Listing Agent

- Establish compensation from Listing Agent, Seller or Buyer

11

## Talking Points



### Sellers:

Will agree to listing brokerage services and fees.  
 Will set cooperative compensation as part of an overall marketing strategy.

*What will motivate the maximum number of buyers to view the home and make offers? What has a proven track record? What will facilitate the funding of the sale for a typical retail buyer?*

Can offer closing costs, can negotiate contributions in purchase contract.

When reviewing offers, identify net prices to compare apples to apples.

12





### Showing Any Other Agent's Listing

Required Written Agreement – Can be

- Buyer Agency
- Facilitator
- Short Term/Long Term
- Property Specific

Compensation/Fees

- Must be clearly agreed upon
- Buyer is responsible for the fee
- Avoid pre-filling form

Compliance

- Prime MLS can request a copy within 4 hours
- Dotloop files submitted to office

15

### Buyers:

Will agree on buyer services and fees. Buyer is responsible for the payment to their agent.

Can pay agent directly or can pay indirectly if the seller builds a credit for the agent fee into the price.

Sellers may offer cooperative compensation in advance as part of an overall marketing strategy. Buyers may request a credit towards fees or other closing costs in their offer package.



Talking Points

16

This is Consumer Protection

State Law – Brokerage Relationship Disclosure

Required Documentation – a clearly written Services and Fee Agreement

When preparing offers, discuss how Buyer best wants to structure the financials



17

### New Buyer Clients

#### Exclusive Buyer Representation/Designated Agency

- Buyer responsible for Fee - Seller not obligated
- Fee is specific and capped
- Protection Clause – x months unless they enter into a new Exclusive Representation with another Broker
- Optional Retainer – nonrefundable & applies towards total fee

[ ] Agent can disclose info for comps/financing

**EXCLUSIVE BUYER REPRESENTATION AGREEMENT (DESIGNATED AGENCY)**  
 New Hampshire Association of REALTORS® Standard Form

This is a Legally Binding Contract. If Not Understood, Legal, Tax or Other Counsel Should Be Consulted Before Signing.

1. The undersigned BUYER (including personal representatives, administrators and assigns), \_\_\_\_\_, hereinafter referred to as "BUYER", hereby employs ("FIRM") \_\_\_\_\_ as BUYER'S Exclusive Agent for the purpose of assisting BUYER in purchases, options, exchanges, leases or trades of property generally described as: DESCRIPTION (GENERAL FEATURES DESIRED): \_\_\_\_\_, LOCATION: \_\_\_\_\_, Sold purchase, lease or exchange of property should be in the price range of \$: \_\_\_\_\_.

**EFFECT OF EXCLUSIVE BUYER REPRESENTATION AGREEMENT.** By employing FIRM as BUYER'S exclusive agent, BUYER agrees to conduct all business and negotiations for property through FIRM and to refer to FIRM all inquiries received from other brokers, salespersons, prospective sellers, lessors, or any other source during the term of this Agreement. In effect, BUYER agrees to pay FIRM a fee for professional services. FIRM's fee for professional services is not set by law and are fully negotiable. BUYER agrees to pay FIRM a fee for professional services in the amount of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the contract price if BUYER or any person or entity acting on BUYER'S behalf purchases, options, exchanges, leases or trades any property, through the efforts of anyone including BUYER, where such an agreement was entered into during the term of this Agreement. Upon signing this Agreement, BUYER shall pay \_\_\_\_\_.

BUYER shall retain FIRM'S services during this period. This fee is nonrefundable and is earned when paid. In the event of a transaction by BUYER under the terms of this Agreement, the fee will be applied as a credit against the total earned professional services fee due FIRM. FIRM shall not receive any portion of the professional services fee identified in this paragraph, if seller's agent is authorized to pay a portion of the professional services fee to FIRM, that portion shall be credited against BUYER'S obligation to pay FIRM. BUYER shall be obligated to pay any difference between the amount due and the amount paid, if any, by the BUYER or seller's agent. BUYER understands and agrees that SELLER has no legal obligation to pay any or all of the professional services fee set forth in this Agreement. BUYER understands and agrees that the professional services fee payable to FIRM under this Agreement shall be deemed earned by FIRM and payable upon BUYER'S purchase, exchange, lease or trade of any property whether or not FIRM was involved in the transaction. FIRM'S fee shall be paid at closing by the settlement agent or paid to FIRM directly by BUYER. BUYER will also pay the fee to FIRM if BUYER or person or entity acting on BUYER'S behalf purchases any property where 1) an agreement to purchase the property was entered into within \_\_\_\_\_ months after the expiration or rescission of this Agreement; or 2) BUYER was introduced to the property by FIRM unless BUYER has entered into an Exclusive Buyer Agency Agreement with another firm. BUYER authorizes the disclosure of information related to this Agreement to the MLS, closing agent and lender, if any, for verification and compliance purposes.

**AGREEMENT SHALL BE IN EFFECT FROM \_\_\_\_\_ THROUGH \_\_\_\_\_.** Upon signing of a contract for sale and purchase of the property, all rights and obligations of this Agreement will extend through the closing as specified in the Purchase and Sales Agreement.

**BUYER'S OBLIGATION.** BUYER will cooperate with FIRM by providing all information necessary to evaluate BUYER'S needs and preferences, including personal financial information, cooperation in scheduling appointments for showings, and by notifying FIRM of any changes at first contact that BUYER is being exclusively represented by FIRM.

**DESIGNATED AGENCY.** FIRM practices designated agency. This means that BUYER will be appointed a specific agent (s) who will represent BUYER in this transaction and who will owe BUYER the fiduciary duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting. Only the BUYER'S designated agent(s) will represent BUYER. All other agents of FIRM will not represent BUYER and may represent a potential Seller. By signing this agreement, BUYER consents to the appointment of \_\_\_\_\_ as BUYER'S designated agent(s). Designated Agent(s) will utilize professional knowledge to make a good faith effort to locate real property as described by BUYER in the property description above. Designated agent(s) will assist BUYER in the transaction and will act at all times in BUYER'S interest. At time of initial contact, agent(s) shall inform all sellers and their agents with whom agent has contact in connection with this Agreement that agent is acting on behalf of FIRM. (As required by Real 701.01(b) of the NH Real Estate Commission Regulations).

**BUYER'S SERVICES.** BUYER acknowledges that FIRM is being retained solely as a real estate agent and not as an attorney, accountant, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. BUYER has read and understood this Agreement and has had the opportunity to seek professional advice concerning the condition of the property and legal and tax matters. It is understood and agreed that BUYER that FIRM may provide names of service providers or products as one of a number of choices available to BUYER. FIRM shall not be liable for any action, inaction, failure, negligence, error or omission of a service provider or product.

INITIALS \_\_\_\_\_ FIRM \_\_\_\_\_

18

## New Buyer Customers

### Buyer Facilitator Agreement

No fiduciary duties. No exclusivity. No description of property sought.

- Work with the Buyer, not for the Buyer.
- Buyer responsible for specific, capped fee.
- Optional non refundable retainer, applied towards final fee.
- Protection Clause – xx months unless there is a new Exclusive Representation with another Broker.

**BUYER FACILITATOR RELATIONSHIP AGREEMENT**  
**New Hampshire Association of REALTORS® Standard Form**

This is a Legally Binding Contract. If not understood, Legat, Tax or Other Counsel Should be Consulted Before Signing.

1. ("BUYER") choose(s) to hire ("FIRM") to represent them as a Facilitator only.

2. The FIRM is not acting as an agent of the BUYER and does not owe fiduciary duties including confidentiality to the BUYER. FIRM is solely acting as a Facilitator. In that role, FIRM may assist BUYER by performing ministerial acts, accounting for any funds received and providing reasonable care and skill. Ministerial acts are acts of an administrative nature such as showing property, preparing offers, conveying offers and agreements between the parties and providing information and assistance regarding professional services not related to real estate. In performing these ministerial acts, FIRM will not advocate for or counsel BUYER. BUYER may decide to enter into a fiduciary relationship at some future time and may employ FIRM prior to or at the time of an offer as Buyer's Agent by entering into a written contract for representation. BUYER authorizes FIRM to disclose information related to any transaction to the N.H.S. listing agent and lender, if any, for verification and compliance purposes. BUYER acknowledges that FIRM is acting solely as a Facilitator and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, home inspector or other professional service provider. BUYER has been advised to seek professional advice concerning the nature of the property and legal and tax matters. It is understood and agreed by BUYER that FIRM may provide names of service providers as one of a number of choices available to BUYER. FIRM shall not be liable for any action, inaction, failure, error or omission of a service provider or product.

3. **Service fees are not set by law and are fully negotiable.** BUYER agrees to pay FIRM a fee for professional services in the amount of \_\_\_\_\_ or \_\_\_\_\_% of the contract price if BUYER or any person or entity acting on BUYER'S behalf purchases, exchanges, leases or trades any property through the efforts of anyone including BUYER, where such an agreement is entered into during the term of this Agreement. Upon signing this Agreement, BUYER shall pay \$ \_\_\_\_\_ to retain FIRM's services. This retainer is nonrefundable and is earned when paid. In the event of a transaction by BUYER under the terms of this Agreement, the retainer fee will be applied as a credit against the total agreed-upon professional services fee.

4. If BUYER receives compensation from any source that exceeds the professional services fee identified in this paragraph, BUYER shall pay to FIRM if BUYER or any other person or entity acting on BUYER'S behalf purchases any property where 1) an agreement for the purchase of property was entered into within \_\_\_\_\_ months after the expiration or rescission of this Agreement or any extension or renewal of this Agreement, or 2) BUYER was introduced to this property by FIRM unless BUYER has entered into an Exclusive Buyer Agency Agreement with another firm. If seller's agent is authorized to disburse a portion of the professional services fee to FIRM, that portion shall be paid to FIRM. BUYER'S obligation to compensate FIRM shall be obligated to pay any difference between the amount due and the amount paid, if any, by the seller and/or seller's agent. BUYER understands and agrees that seller has no legal obligation to pay the professional services fee set forth in this Agreement. BUYER understands and agrees that the professional services fee payable by BUYER to FIRM under this Agreement shall be deemed earned by FIRM and payable upon BUYER'S purchase, exchange, lease or trade of any property whether or not FIRM was involved in the transaction. FIRM's fee shall be disbursed as settlement agent or paid directly to FIRM by the BUYER.

5. **AGREEMENT SHALL BE IN EFFECT FROM** \_\_\_\_\_ through \_\_\_\_\_. Upon full execution of a contract for the purchase of the property, all rights and obligations of this Agreement will extend through the closing as specified in the Purchase Agreement.

6. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and any prior agreements, whether oral or written, and shall be merged and integrated into this Agreement.

7. **DISCLAIMER:** This Agreement is not intended to create a fiduciary relationship between the parties.

8. **WITNESSES:**

9. **BUYER'S ACKNOWLEDGEMENT:** I have read this contract in its ENTIRETY. I understand that this is a binding contract and that I should seek independent legal counsel if I have any questions or concerns.

10. **FAIR HOUSING REGULATIONS:** THIS AGREEMENT IS OFFERED PURSUANT TO FAIR HOUSING REGULATIONS, WITHOUT RESPECT TO AGE, RACE, COLOR, SEX, NATIONAL ORIGIN, DISABILITY, MARITAL STATUS, SEXUAL ORIENTATION, MARITAL STATUS, SEXUAL ORIENTATION, ANCESTRY OR NATIONAL ORIGIN.

11. **BUYER'S ACKNOWLEDGEMENT:** I acknowledge that it has been advised that professional services fees are not set by law and are fully negotiable.

\_\_\_\_\_, Date \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 \_\_\_\_\_, Date \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 \_\_\_\_\_, Date \_\_\_\_\_  
 (Address) \_\_\_\_\_  
 Name of Firm \_\_\_\_\_

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19

### Designated Agency

Sellers : Other agents in my firm may bring a buyer and their compensation arrangements are treated the same as agents outside our firm

Buyers: Other agents in my firm may represent sellers and Buyer needs to notify all agents that they are represented. Compensation arrangements in house are treated the same as listings outside our firm



### Talking Points

20


## Purchase & Sale

Document any offer or request for Seller to pay co-op compensation.

### CLAUSE LIBRARY

“Seller and Buyer agree that Seller shall pay to Buyer’s FIRM at the time of closing the amount of \$ \_\_\_\_\_ or \_\_\_\_\_% of the net contract price for the transaction. This payment to Buyer’s FIRM is separate and distinct from any compensation Seller owes to its listing FIRM.”

**PURCHASE AND SALES AGREEMENT**  
New Hampshire Association of REALTORS® Standard Form



[EFFECTIVE DATE]  
EFFECTIVE DATE is defined in Section 21 of this Agreement.

1. THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ between \_\_\_\_\_ (SELLER) of \_\_\_\_\_ City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ and \_\_\_\_\_ (BUYER) of \_\_\_\_\_ City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**WITNESSETH:** That SELLER agrees to sell and convey, and BUYER agrees to buy certain real estate situated in City/Town \_\_\_\_\_ located at \_\_\_\_\_ County \_\_\_\_\_ Book \_\_\_\_\_ Page \_\_\_\_\_ Date \_\_\_\_\_ (PROPERTY).

The **SELLING PRICE** is \_\_\_\_\_ Dollars \$ \_\_\_\_\_ A DEPOSIT in the form of \_\_\_\_\_ is to be held in an escrow account by \_\_\_\_\_ (ESCROW AGENT). BUYER  has delivered, or  will deliver to the ESCROW AGENT's FIRM within \_\_\_\_\_ days of the EFFECTIVE DATE, a deposit of earnest money in the amount of \$ \_\_\_\_\_ BUYER agrees that an additional deposit of earnest money in the amount of \$ \_\_\_\_\_ will be delivered on or before \_\_\_\_\_ if BUYER fails to deliver the initial or additional deposit in compliance with the above terms, SELLER may terminate this Agreement. The remainder of the purchase price shall be paid by wire, certified, cashier's or trust account check, in the amount of \$ \_\_\_\_\_

**DEED:** Marketable title shall be conveyed by a \_\_\_\_\_ deed, and shall be free and clear of all encumbrances except usual public utilities serving the PROPERTY.

**TRANSFER OF TITLE:** On or before \_\_\_\_\_ or some other place of mutual consent as agreed to in writing.

**POSSESSION:** Full possession and occupancy of the premises with all keys shall be given upon the transfer of title free of all tenants and occupant's personal property and encumbrances except as herein stated. Said premises to be then in the same condition in which they now are, reasonable wear and tear excepted. SELLER agrees that the premises will be delivered to BUYER free of all debris and in "broom clean" condition. Exceptions: \_\_\_\_\_

Buyer reserves the right to conduct a walk through inspection upon reasonable notice to SELLER's real estate FIRM within \_\_\_\_\_ hours prior to time of closing to ensure compliance with the terms of this Agreement.

**REPRESENTATION:** The undersigned SELLER(S) and BUYER(S) acknowledge the roles of the agents as follows:  
is a  seller agent  buyer agent  facilitator  disclosed dual agent \_\_\_\_\_ of \_\_\_\_\_  
is a  seller agent  buyer agent  facilitator  disclosed dual agent \_\_\_\_\_ of \_\_\_\_\_  
\*if agent(s) are acting as disclosed dual agents, SELLER and BUYER acknowledge prior receipt and signing of a Dual Agency Informed Consent Agreement.

**NOTICE OF DESIGNATED AGENCY:** If checked, notice is hereby given that BUYER is represented by a designated buyer's agent and SELLER is represented by a designated seller's agent in the same firm.

**INSURANCE:** The buildings on said premises shall, until full performance of this Agreement, be kept insured against fire, and other extended casualty risk by SELLER. In case of loss, all sums recoverable from said insurance shall be paid or assigned, on transfer of title, to BUYER, unless the premises shall previously have been restored to their former condition by SELLER, or, at the option of BUYER, this Agreement may be rescinded and the DEPOSIT refunded if any such loss exceeds \$ \_\_\_\_\_.

SELLER(S) INITIALS \_\_\_\_\_ BUYER(S) INITIALS \_\_\_\_\_

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PAGE 1 OF 5

21

# Statements can be Price Fixing!

W% is the normal rate charged for listing this type of property

Everyone charges X%

Y% is the going rate

You won't find a full-service brokerage that charges less than Z%

22