

REALTOR® Risk Management and Consumer Protection Report

C.A.R. Meeting - Spring 2024

Affiliate Report:

Betty Carter, Fidelity National Home Warranty

Email: betty.carter@fnf.com

Fraud

- Prevalent vendors filing fraudulent reports.
- Sellers not disclosing pre-existing conditions.
- There are a series of letters being mailed out urging you to renew your homeowner warranty. If you get a letter, contact your home warranty company.

Region Reports (not all regions provided reports due to time constraints):

- **Region 2** - Concerns about the CPI for rental increases and being able to rely on the numbers. Buyer broker agreement are causing confusion. Not educating and misleading the public. Lockboxes - approve a single type of lockbox and not having any liability.
- **Region 3** - Excess amount of buyers going to listing agents and not wanting to be represented. Local broker put article in local paper and is creating a new model derogatory towards the industry. Gold mine trying to reopen in the town.
- **Region 5** - Angst and uncertainty with buyer broker agreement and procuring cause. Insurance in senior community is an issue with lending and can only sell with all cash.
- **Region 9** - Blind advertising and not sharing information.
- **Region 10** - Using multiple counter offer when they are have not received multiple offers. MLS only listings where they are not representing the sellers.
- **Region 15** - Ban on all signs. \$158 violation.
- **Region 16** - Lending industry - Submitting false W2s.
- **Region 17** - Land sales - producing fake deeds and listing properties that cannot actually be sold. Wholesaling - Blanket offers being made, tying up properties and then selling/assigning and selling before close. Should there be licensure for wholesaling?
- **Region 31** - Listing agents are not updating the MLS status within the time required once an offer is accepted, leaving status as "active."
- **Region 32** - Brokers and agents checking exclusive box on the Buyer Representation and Broker Compensation Agreement (BRBC) without discussing it with the client. Antitrust issues with discussion groups discussing compensation.

Other items:

- Transaction coordinators performing tasks they are not licensed for.
- Improper use of photographs.
- Agents video recording listings without authorization.
- Advertising without listing agreements.

Legal Update - Gov Hutchinson

Settlement of the lawsuits:

- Everyone has settled.
- Preliminary approval has started the clock for anyone wanting to opt-in.
- Rules will kick in prior to the settlement approval.
- NAR directors next will presumably adopt the new rules. MLS will change their rules. Not all changes will happen at the same time. NAR will come up with model rules, but MLS may have some tweaks. Not everything will change at the same time/day.

Two major rules changes:

- Buyer Representation Agreements are going to be mandatory. CAR directors already agreed to sponsor legislation for mandatory buyer representation agreements. What triggers this? Before the buyer tours the house, you have to have it. As soon as you start working with a buyer: identifying potential properties, arranging for a client to tour a property.
- Listing agents will not be able to make a unilateral offer of compensation in the MLS. Listing agents can still compensate a buyer's agent, but cannot communicate/commit to it in the MLS. First step as buyer's agent is to inquire what is being offered, if any. At this point conservatively, it can be posted on the brokerage website, phone/email/text with the listing agent. No social media. Three ways for buyer's agents to be paid.
 1. Offered by the listing broker, the listing agent has to agree in writing with the Cooperating Broker Compensation Agreement (CBC.)
 2. Paid by the seller through the RPA 3.G(3), Seller Payment to Buyer's Broker (SPBB). You can advertise in the MLS if the seller is willing to pay in the private remarks as seller concessions to the buyer (cannot say "commission").
 3. Buyer pays and their own agent through the BRBC.

Forms:

- Lots of training will be available and will be recorded. Live and Zoom appearances to teach associations, offices, etc.
- Out now - Broker Compensation Advisory (BCA). Not mandatory, but recommended. One page form explaining how commissions work. Will be attached to the buyer broker agreement and the listing agreement when updated versions come out.

Buyer Representation and Broker Compensation Agreement (BRBC):

- Grid format
- Defaults to non-exclusive.
 - Exclusive - If you buy anything, I am your agent.
- Defaults to single family. Maximum time for length of the agreement is 3 months.
- Optional form, Buyer Preference, where the buyer can tell you more specifically what they are looking for.
- Compensation - Today you can use zero, once the new rules kick in you have to use a number and it is the number you expect to get paid by all sources. Total amount you want in either a number or a percentage. You can amend if the listing agent is offering more, but your buyer will need to agree to it.
- Buyer Financial Personal Information Form - verification that buyer has funds to pay.
- Listing agent will want to see agreement between you and the buyer. You can show the seller the last page which will show the actual number the buyer is agreeing to pay.

Changes to the Listing Agreement:

- Grid format.
- Compensation - Specific number to pay listing agent. Specific number to offer buyer's agent. Buyer's coming directly to the listing agent: discuss with seller and agree what the seller will pay you to help an unrepresented buyer or if it is agreed to be a dual agent.

Open Houses (3 choices):

1. Talking to someone at an open house is not representing a buyer.
2. Limited property and buyer representation agreement to be used. Can be used if someone wants to test the waters with a few properties.
3. Open house visitor and non-disclosure sign in sheet where you're not representing them.

Signed Listing Agreements or Buyer Broker Agreements:

If a listing agreement or buyer broker agreement is signed today and it extends past when the rules change, you will need to amend since the rules are changing in the middle. Modification of terms for the listing agreement or modification of terms for the buyer broker agreement. If you are in escrow prior to the new rules, proceed as is.

Other Forms:

- Lease form - Updated to reflect one month's security deposit. Active military – one month.
- Security Deposit Disclosure and Addendum – Explains the new rules on security deposits.
- Seller Property Question – Adds a new question re: flipping, if you've owned the home for less than 18 months. Was the property ever tenant occupied? How did that tenancy end?
- Balcony Inspection Disclosure form
- Unrepresented buyers and sellers. Form Buyer Non-Agency Agreement (BNA) or Seller Non-Agency Agreement (SNA). These forms allow you to "help" the buyer or seller, but not represent them. Working in the seller or buyer's best interest (if they allow) to provide documents.

Changes to the RPA:

- Will now reference the balcony inspection form and law.
- New contingency for insurance (getting affordable insurance).
- 8 forms attached to the RPA will now be reduced. Fair housing will be incorporated into the RPA.
- Email delivery will be default. Box to check if you want to opt out of it.