

PLEASE READ: A note from Casey Chapman, NDAR legal, regarding changes to the broker compensation language in the Purchase Agreement, as questions arise about filling in the space on line 64 of the Purchase Agreement.

August 29, 2024

With the removal of the unilateral offer of compensation from the MLS, there are a couple understandings which are the basis for the language in the Purchase Agreement.

First, if the buyer broker has an agreement with the listing broker on cooperative compensation (there is an NDAR form “Cooperative Compensation Agreement” for this purpose, or the agreement could also be shown by email, text message, etc., between the brokers), and if that cooperative compensation is agreeable to the buyer (who is the one who would pay any difference between the buyer broker commission and the cooperative compensation), then the buyer would place a ‘0’ in the blank space.

Second, however, if there is no agreement on cooperative compensation (which could arise either if the listing broker is offering no cooperation to the buyer broker or if the buyer broker has not inquired about cooperative compensation), or if the buyer determines that the listing broker’s cooperative compensation offer to the buyer broker is too low (again remembering that the buyer is responsible to pay the difference), the

buyer would place a number in the blank space which reflects the buyer's request for the seller to pay some compensation to the buyer broker. As an example, if the buyer is paying A% under the buyer broker agreement but the listing broker's offer of cooperative compensation is B% (lower), the buyer could decide to place the difference, "C" in the blank space. In that same example, if the listing broker is offering no cooperative compensation, the buyer could decide to place "A%" in the blank space.

It is very important to make the distinction between the compensation agreements, one being a cooperative agreement from broker to broker (Cooperative Compensation Agreement), and the other being a direct agreement between seller and buyer (Purchase Agreement). That is the reason for the 'in addition' language in the purchase agreement.

Also, please remember that, under settlement, the buyer broker can never receive more than the amount reflected in the buyer's agreement with the buyer broker.