



Housing Counseling Federal Advisory Committee

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



Housing Counseling Federal Advisory Committee Sub-Committee On

The Housing Counselors' Role in Educating Consumers About Real Estate Commissions

CHARGE

As a result of recent lawsuits and settlements regarding how consumers purchase and sell residential real estate, new guidance, policies, and practice changes have been developed by the National Association of REALTORS® which are also being examined by the United States Justice Department.

The guidance, policies, and practice changes took effect on August 17, 2024, but the process of implementation may vary from state to state depending upon state law; multiple listing service policies and regulations; and how each state REALTOR® board implements the policies for their members.

The work of the subcommittee is to recommend next steps for the HUD Office of Housing Counseling consideration for the development of educational resources, best practices, and guidance that can be shared with housing counseling agencies and housing counselors to ensure that consumers are provided accurate, current, and timely guidance when engaging the services of a real estate licensee in the purchase or sale of residential real estate.

The subcommittee will engage a variety of organizations for input during the deliberations process including but not limited to the National Housing Resource Center, National Association of REALTORS®, National Association of Real Estate Brokers, National Association of Hispanic Real Estate Professionals, the Asian Real Estate Association of America, and National Mortgage Bankers Association.

September 11, 2024



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PREAMBLE

Housing counselors must approach the implementation of the practice changes from the NAR Settlement Agreement with a high level of sensitivity. It is essential that prequalifying and prepurchase counseling for first time home buyers, along with preparation to sell counseling for seniors, effectively guides consumers in a comprehensive manner. Recognizing the unique changes in the buying and selling process requires that consumers are fully informed of their rights and obligations regarding each element of the contractual agreements.

Guidance for Housing Counselors and Housing Counseling Agencies

Housing counselors need to become knowledgeable regarding their state real estate licensing agency, state and local real estate boards of REALTORS® policies and forms, and local multiple listing services policies and forms to ensure that consumers are aware of the changes in the contractual relationships between consumers and real estate licensees who are MLS participants and members.

Housing counselors should be prepared to share with consumers the following regarding Buyer Agency Agreements:

- The practice changes from the NAR settlement agreement became effective on August 17, 2024.
- MLS organizations are changing their policies and forms and REALTOR® associations are changing their forms to comply with the practice changes. It is critical to work with REALTOR® state associations, local boards, and local MLSs to ensure you have the most up to date forms and policies.
- The consumer and agent must enter into a written buyer agreement prior to visiting a property. All terms of the agreement are negotiable.
- There is no national standard written buyer agreement.
- A written buyer agreement does not replace a state-required agency disclosure form.
- There is no standard commission charge by a buyer broker.
- There is no national standard set of services that can be provided by a broker in written buyer agreement.



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- There is no standard length of a written buyer agreement.
- Compensation from a seller or listing broker to a buyer broker or representative cannot be offered in a multiple listing service platform.
- The total compensation a buyer broker or representative receives from any source cannot exceed the amount specified in the written buyer agreement.
- Each state has its own real estate licensing law.
- Each state has its own state board of REALTORS® and multiple local REALTOR® boards. As a result, written buyer agreements will vary from state to state and may vary within each state. Individual firms may have their own written buyer agreements.
- Each state has various multiple listing services (MLSs). Some MLSs are REALTOR® association-owned, and some MLSs are not REALTOR® association owned. Each MLS adopts its own policies.

Housing counselors should gather sample Written Buyer Agent Agreements to educate their clients:

- Each state board of REALTORS® and local Board of REALTORS® and local MLS and individual real estate companies may have their own written buyer agreement. Housing Counselors are encouraged to establish a library of written buyer agreements that are most frequently used in their service area.
- Written buyer agreements provide the consumer with transparency and choices regarding the length of the contract, the services to be provided, the amount of compensation, the source of the compensation, conflicts of interest, dispute resolution, and must conform to state law.

Sellers must have a written seller agreement with their agent:

- The written seller agreement must reflect negotiated terms, services, and compensation.
- The written seller agent agreement must include:
 - Disclosure of the compensation amount
 - Compensation must be specific and not open-ended
 - A term prohibiting the seller agent from receiving compensation exceeding the agreed upon amount
 - A disclosure that broker commissions are negotiable and not set by law
- No written agreement is needed for initial consultations.



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- Sellers can offer seller concessions such as closing costs and may offer compensation to a buyer agent however the offer of compensation to a buyer agent may not be shared on an MLS platform.
- The NAR settlement agreement became effective on August 17, 2024.
- It is critical to work with REALTOR® state associations, local boards, and local MLSs to ensure you have the most up to date forms and policies.
- A seller agent agreement does not replace a state-required agency disclosure form.
- All terms of the seller agent contract are negotiable.
- There is no standard seller agent agreement.
- There is no standard commission charged by a seller agent.
- There is no standard set of services that can be provided by an agent in a seller agent agreement.
- There is no standard length of a seller agent agreement.
- The total compensation a seller agent receives from all sources cannot exceed the amount specified in the seller agent agreement.
- Each state has its own real estate licensing law.
- Each state has its own state board of REALTORS® and multiple local REALTOR® boards. As a result, seller agent agreements will vary from state to state and may vary within each state. Individual firms may have their own seller agent agreements.
- Each state has various multiple listing services (MLSs). Some MLSs are REALTOR® association-owned, and some MLSs are not associated with a REALTOR® association. Each MLS adopts its own policies.

2. We Encourage Stakeholder Engagement and Collaboration

- Engage with organizations such as:
 - National Housing Resource Center
 - National Association of REALTORS®
 - National Association of Real Estate Brokers
 - National Association of Hispanic Real Estate Professionals
 - Asian Real Estate Association of America



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- National Mortgage Bankers Association
- Organize virtual meetings, trainings and/or webinars to discuss the new policies and gather input on best practices for implementation.
- Continue to engage with public and private sector stakeholders to collect broader input from housing counselors and real estate professionals.

3. Drafting of Guidance with Office of Housing Counseling Staff

- Compile the gathered information and insights into a draft best practices document.
- Ensure the guidance is clear, concise, and covers various scenarios consumers might face.
- **Include Settlement Agreement Requirements:**
 - Detail the necessity and differences of written buyer agent agreements.
 - Explain the negotiable nature of contract terms.
 - Highlight the lack of standardization in contracts, commission charges, services, and contract lengths.
 - Emphasize the state-specific variations and the need to follow local REALTOR® boards and MLS policies.
- **Incorporate Written Buyer Agreement Information:**
 - Outline the mandatory provisions for written buyer agent agreements as per the NAR settlement.
 - Discuss other considerations such as buyer agent agreement format, types of representation, broker services, consumer protection, federal, state, and local fair housing laws, term and termination, compensation and fees, conflicts of interest, and dispute resolution.
- **Include NAR Settlement Changes for Homebuyers:**
 - Clearly state the new requirements for written buyer agent agreements and their implications for homebuyers.
 - Provide guidance on ensuring buyer agent agreements reflect negotiated terms and understanding services and compensation.
 - Highlight what the settlement does and does not change regarding buyer agent compensation, ethical obligations, and consumer choices.
- **Include sections on:**
 - Understanding the new policies and regulations
 - The role of housing counselors in educating consumers
 - State-specific variations and considerations
 - Best practices for disseminating information to consumers
- **Incorporate Listing Agreement Information:**



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

- Outline the mandatory provisions for listing agreements as per the NAR settlement.
- Listing broker must conspicuously disclose and obtain seller consent before offering or agreeing to pay compensation to buyer agents.
- Seller must also receive disclosure that broker commissions are not set by law and are fully negotiable.
- Discuss other considerations such as agreement format, types of representation, broker services, consumer protection, term and termination, compensation and fees, conflicts of interest, dispute resolution and federal, state, and local fair housing laws.

4. Review and Feedback

- Share the draft best practices guidance with stakeholders.
- Incorporate feedback and make necessary revisions

5. Finalization and Approval

- Finalize best practices with industry partners.

6. Dissemination Plan

- Develop a comprehensive dissemination plan, including:
 - Distribution through housing counseling agencies
 - Webinars and training sessions for housing counselors
 - Collaboration with REALTOR® boards & related industry trade associations for state-specific implementations
 - Online resources from HUD and toolkits for easy access by consumers and counselors

7. Implementation and Monitoring

- Begin the implementation of the August 17, 2024 guidance.
- Monitor the implementation process & provide technical assistance to HUD Approved Housing Counseling Organizations.
- Collect feedback from housing counselors and consumers to assess the effectiveness of the guidance
- Adjust as needed based on feedback and evolving marketplace conditions.



Housing Counseling Federal Advisory Committee

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT



Communication Strategy:

- **Regular Updates:** Provide regular updates to all stakeholders throughout the process via emails, Housing Counseling Today, and the HUD Exchange website.
- **Webinars:** Host webinars to explain the new policies, how they will be implemented, and how housing counselors can best support consumers.
- **Resource Center:** Explore the creation of an online resource center, on the HUD Exchange where all best practice, guidance documents, FAQs, and additional resources can be accessed by housing counselors and consumers.

By ensuring that both first-time home buyers and seniors preparing to sell are fully informed of their rights and obligations, housing counselors can help consumers navigate the evolving real estate landscape with confidence. The focus on stakeholder engagement, clear guidance, and continuous feedback loops ensures that the implementation will be thorough and responsive to the needs of all parties involved.

Committee Recommendations:

1. The HCFAC recommends that the Office of Housing Counseling encourage stakeholder engagement and collaboration including organizations such as: National Housing Resource Center, the National Association of REALTORS® National Association of Real Estate Brokers, the National Association of Hispanic Real Estate Professionals, the Asian Real Estate Association of America, National Mortgage Bankers Association, the Coalition of HUD Intermediaries, and others.
2. The HCFAC recommends that the Office of Housing Counseling create an online resource center on the HUD Exchange where all best practices, guidance documents, FAQs, and additional resources can be accessed by housing counselors and consumers.
3. The HCFAC recommends that the Office of Housing Counseling develop training, meetings and/or webinars to ensure that HUD Certified Housing Counselors are fluent in the new standards.
4. The HCFAC recommends that the Office of Housing Counseling incorporate the new standards into the pending update to the housing counseling best practices.



Housing Counseling Federal Advisory Committee



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5. The HCFAC recommends that the Office of Housing Counseling engage with stakeholders to regularly update its industry and educational initiatives.
6. The HCFAC recommends that the Office of Housing Counseling collaborate with HUD's Office of Fair Housing and Equal Opportunity to ensure that every consumer can purchase the home of their choice in a marketplace free of discrimination.
7. The HCFAC recommends that the Office of Housing Counseling consider the creation of an education and outreach campaign for housing counselors to educate consumers in conjunction with industry trade associations.

Approved: September 11th, 2024