



Exclusive Right to Sell (ERS) Q&A

(This information is being provided with the information we have as of 8/14/24, we anticipate changes, please continue to monitor the MLS, regulated 3rd parties and your broker for any changes)

With the changes made recently to the NAR laws, we know you have a lot of questions. Here are some questions and answers to hopefully help!

Do I need an ERS Addendum for my current listing?

1. My listing is in an Active Status on the MLS with an old ERS signed: YES
2. My listing is in an Active Status on the MLS with a new ERS signed: NO
3. My listing is in ANY other status on the MLS with an old ERS signed: NO
4. My listing is in ANY other status on the MLS with a new ERS signed: NO
5. My listing was under contract but has fallen through and is back Active on the MLS with an old ERS: YES
6. My listing was under contract but has fallen through and is back Active on the MLS with a new ERS: NO

How do I fill out section 2.1 & 2.2 of the new ERS?

Since the new laws allow for the commission to be negotiated in the contract, the way you will fill out compensation on the ERS has changed a little bit.

- **What goes in Section 2.1?** Moving forward, along with the \$495 Compliance Fee, you are only to put a Dollar Amount or Percentage of the Listing Commission being collected from the seller to pay the Company for your listing commission.
- **What does this mean?** You will no longer put the total dollar amount or percentage for the compensation in this section for the Listing and Buyer commissions. This is only used for the listing side commission.

Example: Your seller offers you a 3% Compensation as their listing agent:

2. BROKERAGE COMPENSATION.

2.1 Seller's Brokerage Fee. If, during the Listing Period, the Company, the Seller's Agent, the Seller, another real estate agent, or anyone else locates a party who is ready, willing and able to buy, lease or exchange (collectively "acquire") the Property, or any part thereof, at the listing price and terms stated on the Data Form, or any other price and terms to which the Seller may agree in writing, the Seller has negotiated with and agrees to pay to the Company a brokerage fee in the amount of \$ 495.00 and 3 % of such gross acquisition price (the "Brokerage Fee").

The Brokerage Fee, unless otherwise agreed in writing by the Seller and the Company, shall be due and payable from the Seller's proceeds on: (a) If a purchase, the date of recording of the closing documents for the acquisition of the Property ("Closing"); (b) If a lease, the effective date of the lease; and (c) if an option, the date consideration for the option agreement is paid. If within the Listing Period, or any extension of the Listing Period, the Property is withdrawn from sale, transferred, conveyed, leased, rented, or made unmarketable by a voluntary act of Seller, without the written consent of the Company; or if the sale is prevented by default of the Seller, the Brokerage Fee shall be immediately due and payable to the Company.



- **What goes in section 2.2?** If your seller authorizes the Company to advertise/communicate (anywhere EXCEPT the MLS or an MLS Affiliate) that the seller is offering compensation to a Buyer's Brokerage, this is where you will include the agreed upon Dollar Amount or Percentage that your seller is willing to pay. This should be up to the amount the seller is willing to pay, which means it doesn't necessarily have to be the final amount.

Example: Your seller authorizes you to advertise/communicate with interested parties they are willing to offer up to 3% compensation to the buyer's agent.

2.2 Authorization to Offer Compensation to Buyer's Brokerage. The Company is authorized to advertise or otherwise communicate that the Seller and/or the Company is offering to pay compensation to a buyer's brokerage in an amount up to [] \$ or ☒ 3 % of the gross acquisition price. BROKERAGE FEES ARE FULLY NEGOTIABLE AND ARE NOT SET BY LAW, ANY BOARD OR ASSOCIATION OF REALTORS®, MULTIPLE LISTING SERVICE (the "MLS"), OR IN ANY MANNER OTHER THAN BETWEEN THE COMPANY AND SELLER.

Additional Questions You May Have:

1. **What if my seller decides to change the amount of compensation they are willing to pay the BAC after they've already signed an ERS?**
 - If this happens, you would just do an ERS Addendum. Simply stating something such as "In reference to section 2.2 of the ERS, BAC compensation to be changed to 2%".
2. **What if my seller doesn't know how much BAC compensation they want to offer when signing the ERS? Can I leave this field blank?**
 - Yes! You can definitely leave section 2.2 blank or put 0% if your seller would rather wait to decide this when an offer comes in and is negotiated in the contract. However, by not indicating an amount here, you are NOT authorized to discuss any potential BAC the seller is willing to provide with interested parties, or advertise/communicate a potential BAC for the property. You would simply need to tell any interested parties that they can submit an offer that you will present to your seller.
3. **I noticed that the ERS now shows Gross Commission, what does that mean?**
 - That is correct, previously we did not disclose whether the compensation was to be Gross or Net on the ERS. However, with the new form, all compensation is paid at Gross unless negotiated otherwise in the contract.



- **What is the difference between Gross and Net?**

- Gross = Commission paid on the full sales price of the home regardless if there are seller paid closing costs.
- Net = Commission is paid on the net sales price of the home, which means any closing costs are deducted from the sales price and commission is based off of this end total.

Due to these being new guidelines the NAR has implemented, we expect there to be changes in the future. Please be sure to stay up to date on all trainings, and continue to monitor the MLS and MLS Affiliates. Any new updates will always be communicated with you by your broker whether it's during weekly sales meeting, broker training or via email. Thank you!