

## ANSWERS TO YOUR COMPENSATION QUESTIONS

Recent lawsuits regarding real estate broker compensation have generated many questions among Tennessee REALTORS® members. Keep the following in mind:

### BROKER COMPENSATION IS NEGOTIABLE

There is no association rule or policy that sets compensation amounts or requires brokers to use any specific compensation structure. Brokers may negotiate with clients on their specific fees and services. There are many different compensation models brokers may utilize, including commission, flat fee, hourly fee, and fees for specific tasks, which gives consumers many choices of brokerage models, fees, and services.

### FIRMS MUST SET THEIR FEES INDEPENDENTLY

While some competing firms might charge the same amounts, they must independently arrive at their fees. Firms should never discuss setting fees with competitors; it is a violation of antitrust laws.

### BE COMPLETELY TRANSPARENT ABOUT FEES WITH CLIENTS

Discuss fees with clients up front and get compensation details in writing. If you are representing sellers, you can use Residential Real Estate Listing Agreement, Exclusive Right to Sell. When representing a landlord, you can use Residential Real Estate Listing Agreement, Exclusive Right to Lease. Members representing buyers or tenants can use Residential Buyer/Tenant Representation Agreement.

### DEMONSTRATE YOUR VALUE

Prospects and clients won't know the extent of the work you do on their behalf unless you tell them. Create lists, marketing materials, and presentations that detail all the services and benefits you provide.



## FAQ

### Can listing brokers still offer cooperating compensation?

Yes. No court ruling or NAR policy change prohibits listing brokers from offering compensation to cooperating brokers.

### What should listing brokers discuss with sellers about cooperating compensation?

You should explain the benefits of offering cooperating compensation, such as increasing interest among buyers. Ultimately, any cooperating compensation must be negotiated between the seller and listing broker.

### Can sellers and listing brokers refuse to offer cooperating compensation?

Yes. NAR model MLS rules require listing broker to specify cooperating compensation in order to put a listing in the MLS. However, model MLS rules do not set commission amounts. Some MLSs allow the amount of compensation entered to be zero. Other MLSs require a nominal positive amount be entered of at least one dollar or one cent, which is effectively zero.

### How can I ensure I am fairly compensated as a buyer's broker?

Cooperating compensation offered by a listing broker is negotiable. You can use the Residential Buyer/Tenant Representation Agreement to spell out to your buyer how much you will be compensated, which may come from the seller, listing broker, or your buyer client.

### Will Tennessee REALTORS® create new forms or revise existing forms to address these issues?

Association's legal staff is reviewing existing forms and has created a task force to get member input on the potential need for new or revised forms.