

Buyer Agency

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In order to understand how Buyer's Agents are paid, it is important to understand the traditional fee structure for real estate agents.

In general, the real estate commission is built into the total purchase price of a home as a percentage fee that is agreed to by the seller and listing agent prior to execution of the listing agreement.

There are two parts of this commission:

1. The fee for the broker who lists and markets the property
2. A *cooperating* fee for the broker bringing the buyer

If the listing agent procures a buyer without the assistance of a cooperating broker he/she may keep the entire commission.

Cooperating Brokers

The listing agent (with or without the seller's knowledge) usually determines the cooperating fee paid to other agents. Agents who cooperate with listing brokers may be:

- buyer's agents
- seller's agents (also called sub-agents)
- disclosed dual agents
- non-agents (includes transaction brokers, facilitators, etc. depending on marketplace)

MLS (Multiple Listing Service) member brokers are required to cooperate with buyer and seller agents in access and showing of homes, but the cooperating fee may be different for buyer or seller agents. The majority of listing brokers offer fee cooperation to all agents whether they are sub-agents who represent sellers or buyer agents. A buyer's agent who is paid from the listing broker does not owe any client-level duties to the seller.

When the cooperative fee offered by the listing broker is accepted by the buyer's agent, there is no additional fee due. When the cooperative fee offered is less than the buyer broker's fee previously agreed to, the additional amount can be built into the sales price (so it can be financed) or it can be paid outside the transaction. When the cooperative fee is more than the buyer broker's fee, it is generally refunded to the buyer as a reduction in the total purchase price, or after closing from the buyer's broker.

When the buyer's agent is within the same company as the seller's agent, consent from buyer and seller (and disclosure of the limited relationship) is needed in order to continue with the transaction. In consensual dual agency, both agents become *disclosed dual agents* (who are actually non-agents). The buyer may request to be referred to another agency if this relationship is not acceptable.

Buyer Agency Fee Structure

In buyer representation, the buyer and the buyer's agent determine the commission fee, rather than the seller. The fee may be determined from several options, including:

- Percentage of the total purchase price (fixed or open-ended)
- Hourly fee (normally non-refundable)
- Flat fee

Many buyer agents are offering a flat fee in response to consumer demand. The flat fee is advantageous to the buyer in that the agent will be paid a fixed amount no matter what price the home is purchased, or any incentives the broker offers. This cooperative fee may be more or less than the fee the buyer and his/her broker have agreed to, so a credit or debit may need to be applied at closing.

Although compensation from a seller or listing agent does not mean a buyer's broker owes any duties to the seller, there is a growing trend among buyer representatives of respectfully declining the cooperative fee from the listing broker. Consumer advocates claim that knowledgeable buyer brokers do not accept the cooperative split.

For legal and accounting reasons, it is best to disburse the real estate fees from the purchase price at closing. This practice removes any doubt that the buyer's agent has any relationship with the seller or listing company. The Buyer has additional protection when the buyer's agent is paid from the transaction, rather than the listing company after closing. The buyer (who has a contract with, and owes a commission to the buyer's agent) is assured that his/her agent has been paid in full at closing.

In this scenario the buyer's agent takes the fee directly through the transaction (instead of the cooperative fee). The listing agent takes the same amount that he/she would have taken had this been a cooperative fee split, and the seller receives the same *net price*. The fee is more appropriately distributed, so neither buyer or seller pay additional commission.

Brokerage fees on For Sale by Owner (FSBO) Homes

Many homes for sale by owner have room for negotiation because they have based their asking price on data from Multiple Listing Service homes (which includes commissions for real estate agents). There is also a trend today among For Sale By Owners to offer a fee to real estate agents who bring the buyer for the home. Where no brokerage fee is included in the purchase price, the buyer is generally responsible for his/her agent's fee. But, in those instances, a buyer's agent can protect the buyer by negotiating a more advantageous purchase price, advise and protect the buyer throughout the entire process, and include the fee in the total purchase price of the home. This way the buyer does not pay a commission as an out of pocket expense, for the advice and negotiation assistance provided by the buyer's agent.

Whether the brokerage fees for buyer representation come from the traditional co-fee method or alternatively, through the transaction, in terms of advice, negotiating power, and time saved... represented buyers may benefit by using the services of a skilled buyer's agent.

Note for Sellers: Sellers should discuss the total commission agreement in this instance, before listing their home: A broker who sells her own listing collects the fee that would have gone to a cooperating broker (had there been a cooperating broker). Within the real estate industry, this is referred to as a *double pop* (since the listing broker has earned twice as much in commission). Some savvy home sellers ask their listing agent to accept a reduced total commission in the event that there is a *double pop*, or if they find a buyer on their own.

Note for Sellers: When listing a home for sale you should ask your broker about their company policy regarding commission splits with agents from other companies and buyer's agents. Does it matter to you if the cooperating agent represents the buyer, if in fact, they are willing to offer an acceptable asking price?

Note for Buyers: If the agent you hire to represent you works for a company that also lists homes, and you decide to buy one of those homes, the broker becomes a dual agent. This conflict of interest and reduced level of service should be properly disclosed to both buyer and seller. Consumer advocates recommend that buyers and sellers ask to be referred to an agency that can legally provide exclusive representation, or ask for a reduction in the fees charged by the Brokerage Company.

Note for Buyers: Having an open-ended fee agreement means that the agent may be paid a higher, or lower amount, depending on which property is selected. Many listing agents offer cash bonuses to cooperating agents, or higher percentage fees. Many buyers feel better with a buyer's representative that agrees to a pre-determined fixed fee, or a maximum percentage fee.

Note for Buyers and Sellers: Some listing brokers refuse to reduce the commission owed from the seller to match the buyer's commission to be paid from the purchase price at closing. Even though buyer and seller may agree to this in contract, it is between the seller and listing agent to reduce the listing fee to reflect the declined cooperative fee. For the listing broker to control the disbursement of the fees, he/she must try to take *both sides* of the transaction for him/ her self... and in doing so, force the buyer's agent to accept the cooperating fee.

Note for Buyers: If the seller is unwilling or unable to agree to include the fee at or below the asking price; the buyer may make an offer higher than the seller's asking price to include the fee in the total purchase price, or be responsible for the fee outside of the transaction.