

BUYER BROKERAGE SERVICES AGREEMENT**GENERAL COMMENTS:**

- A. **Use of this Form.** Use this form to represent the buyer as the buyer's agent, to assume the duties in RCW 18.86.050, and to address the brokerage services terms as required under RCW 18.86.020 and 18.86.080.

NOTE: Firms may choose to create their own buyer brokerage services agreements to more effectively differentiate their services, accommodate buyer's needs and interests, and better compete in the market.

- B. **Statutory Requirement to Enter a Buyer Brokerage Service Agreement.** On January 1, 2024, significant revisions to RCW 18.86 took effect. The most significant change requires a broker who is the agent of the buyer to enter written brokerage services agreements with the buyer "before, or as soon as reasonably practical after, its appointed broker commences rendering real estate brokerage services to, or on behalf of, the principal." The revised statute requires that the brokerage services agreement include certain provisions, which Form 41 contains. The statute provides that a broker may not receive compensation unless the brokerage services agreement includes the terms of compensation. See Legal Bulletin 224 for additional information.

In addition to RCW 18.86, NWMLS Rule 101(a)(i) provides: "The buyer brokerage firm's compensation shall be paid (1) as published in the listing if accepted by the buyer on behalf of the buyer brokerage firm in the purchase and sale agreement; or (2) as modified by the buyer, the buyer brokerage firm, and the seller in the purchase and sale agreement." The purpose of this Rule and related provision in the purchase and sale agreement (Specific Term 17) is to ensure that the buyer understands the buyer brokerage firm compensation and to create an opportunity for discussion and negotiation. Using a buyer brokerage services agreement is beneficial to both the broker and buyer in setting expectations, negotiating compensation, and discussing the broker's services.

- C. **Limited Dual Agency / Written Brokerage Services Agreements and Consents.** To be a limited dual agent, RCW 18.86.020 requires that a broker have a written agreement with the buyer, a separate written agreement with the seller, and that the buyer and seller both consent to limited dual agency. See Legal Bulletin 224 for additional information.

For limited dual agency, be sure that in addition to using this buyer brokerage services agreement, your firm also has a listing agreement (e.g., NWMLS Form 1A or 1B) with the seller that contains the required consents, acknowledgments and disclosures.

To meet the statutory consent requirements to act as a limited dual agent, the appointed broker must have a separately initialed consent from both the seller and the buyer. The buyer and seller must also consent to any supervising broker acting as a limited dual agent; however, that consent does not need to be separately initialed.

Paragraph 4 addresses the buyer's consent to limited dual agency. Paragraph 4(a) contains initial and date blocks for a buyer to consent to the appointed listing broker acting as a limited dual agent. If the buyer does not wish to consent to the appointed buyer broker acting as a limited dual agent, the buyer should not initial or date this blank. Paragraph 4(b) contains the buyer's consent to any supervising broker, who also supervises a broker who represents a seller, acting as a limited dual agent.

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D. Distressed Homes. The agreement provides that the firm will not participate in a transaction that is a "Distressed Home Conveyance," unless otherwise agreed in writing. A "Distressed Home Conveyance" is a transaction where a buyer purchases property from a "Distressed Homeowner" (defined by Chapter 61.34 RCW), allows the Distressed Homeowner to continue to occupy the property, and promises to convey the property back to the Distressed Homeowner or promises the Distressed Homeowner an interest in, or portion of, the proceeds from a resale of the property. For more information on Distressed Homes, please see Legal Bulletin 181.

ASSISTANCE FILLING IN THE BLANKS. The following numbers refer to the numbers on the sample form shown in this Manual:

1. **Buyer Brokerage Firm.** Insert the name of the real estate firm as licensed.
2. **Buyer.** Insert the buyer's name. If working with a married couple or more than one individual, it is best to insert all names.
3. **Area.** Insert the geographical areas where the broker is providing brokerage services for the buyer to purchase property.
4. **Term.** Insert the length of the agreement in number of days. Under RCW 18.86.020, the agreement must include a default term of 60 days, with the option for a different term. If the buyer and the buyer broker desire to terminate the agreement, Form 53 (Termination of Buyer Brokerage Services Agreement) is available for use.
5. **Buyer Broker.** Insert the name of the broker who will represent the buyer.
6. **Agency Relationship.** RCW 18.86.020 requires that a buyer brokerage services agreement include checkbox options for the buyer to select either an exclusive or non-exclusive agency relationship. Paragraph 3 of Form 41 includes a brief explanation of the differences between exclusive and non-exclusive agency representation. In addition, paragraph 7 of Form 41 addresses the difference of when compensation is due under exclusive versus non-exclusive agency representation.
7. **Limited Dual Agency.** RCW 18.86.020 requires the buyer's initialed and dated consent before the broker may act as a limited dual agent. A provision is included regarding limited dual agency, with initial blocks for a buyer to consent to the individual buyer broker acting as a limited dual agent. If the buyer does not wish to consent to the individual buyer broker acting as a limited dual agent, then the buyer should not initial or date this blank.
8. **Compensation.** Insert the compensation for the buyer broker's services.
 - a. Amount of Compensation. In paragraph 5, the firm and buyer must agree upon the compensation for the buyer brokerage services. There are a variety of options including a percentage of the purchase price, a flat dollar amount, and any "other" compensation arrangement that the firm and buyer may agree to. There is also an option to designate a different compensation amount in the event the buyer broker is a limited dual agent representing both the buyer and the seller. Note that the buyer does not automatically agree to pay the compensation that is set forth in paragraph 5. Some buyers may not have funds to pay their broker, may be unable to lawfully compensate the buyer broker (e.g., VA regulations prohibit buyer paid compensation), or may be unwilling to agree to upfront

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compensation. As noted below, there is an option in paragraph 6 to request that the seller pay any compensation that is not already covered in an offer of compensation that may be made by the seller in the listing.

- b. Source of Compensation. The seller may, but is not required to, offer compensation to the buyer brokerage firm. Form 41 accounts for different scenarios that might arise depending on the amount of compensation offered by the seller, and these options correspond to the seller's offer of compensation adjustments that a buyer may negotiate with a seller on the Buyer Broker Firm's Compensation Addendum (Form 41C) as part of a purchase agreement.
 - i. Seller's Offer Equal to Compensation. This section provides that if the seller's offer is equal to the compensation agreed upon between the parties, the buyer will accept the seller's offer and the buyer is not obligated to compensate the firm.
 - ii. Seller's Offer Greater Than Compensation. This section provides options for how to distribute amounts offered by the seller that are greater than the agreed upon buyer brokerage firm compensation.
 - iii. Seller's Offer Less Than Compensation. This section provides options for the situation where the seller's offer of compensation is less than the agreed upon amount. The buyer can commit to directly pay any balance to the buyer brokerage firm or the parties can agree that, as a part of buyer's offer, they will request the seller pay the balance. Or the parties can agree upon some other arrangement. Note that if the buyer does agree to pay compensation to the firm (assuming the compensation in the buyer brokerage services agreement is more than the seller's offer), the compensation is due at closing, unless the parties agree to another payment arrangement in the agreement (e.g., an upfront fee paid to the firm).
 - c. Compensation Terms. Paragraph 7 outlines when compensation is due for a closing during the term under an exclusive agreement versus a non-exclusive agreement. Similar to the "tail provision" in the listing agreement, Paragraph 7 then provides circumstances where the buyer may owe compensation to the buyer brokerage firm if the buyer purchases certain property after the expiration or termination of the term. Insert the length of the "tail provision." The section also includes the buyer's consent to the firm receiving compensation from more than one party and to firms sharing compensation, as long as the firm discloses the terms and amounts as required by RCW 18.86.030.
 - d. Showing Properties. Buyer broker must show properties to the buyer for which there is no compensation offered or agreed to be paid, unless otherwise agreed by the parties by marking "shall not".
 - e. Filtering Listings. Buyer broker must bring listings to the attention of the buyer, regardless of the amount of seller's offer of compensation, unless otherwise agreed by the parties. If there is such an agreement, check this box and fill in the relevant information. If more space is needed, use Section 14.
9. **Buyer Initials**. It is advisable to have the buyer initial in these spaces.

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10. **Other Agreements.** Use this space for any other agreements you might have with the buyer.
11. **Buyer's Signature and Date.** The buyer must sign and date this form. In order to be enforceable, a compensation agreement must be in writing and signed by the parties.
12. **Buyer's Phone and Email.** Insert the buyer's phone number and email address, if available.
13. **Buyer Brokerage Firm (Company and Broker).** Fill in the name of the real estate Firm as licensed and provide the signature of the individual broker who will be acting as the buyer's agent.
14. **Buyer Brokerage Firm (Company and Broker) Phone, E-mail and License Numbers.** Insert the buyer brokerage firm and buyer broker license numbers and the buyer broker's phone number and e-mail address.

**BUYER BROKERAGE
SERVICES AGREEMENT**

This Buyer Brokerage Services Agreement (“Agreement”) is effective upon mutual acceptance (“Effective Date”) and is made by and between _____ (“Buyer Brokerage Firm” or “Firm”) and _____ (“Buyer”) for real property located

_____ (“Buyer”) for real property located in the following areas: _____ (unlimited if not filled in) (“Area”).

1. DEFINITIONS. “Purchase(s)” includes a contract to purchase, an exchange or contract to exchange, or an option to purchase.

2. TERM. This Agreement will expire _____ days (60 days if not filled in) from the Effective Date (“Term”). If this Agreement expires while Buyer is a party to a purchase and sale agreement and represented by Buyer Brokerage Firm as indicated on the purchase and sale agreement, the Term shall automatically extend until the sale is closed or the purchase and sale agreement is terminated.

3. AGENCY.

a. Pamphlet. Buyer acknowledges receipt of the pamphlet entitled "Real Estate Brokerage in Washington."

b. Buyer Broker. Buyer Brokerage Firm appoints _____ (“Buyer Broker”) to represent Buyer. This Agreement creates an agency relationship with Buyer Broker and any of Firm’s managing brokers who supervise Buyer Broker (“Supervising Broker”). No other brokers affiliated with Firm are agents of Buyer.

c. Agency Relationship. Buyer Brokerage Firm’s representation of Buyer for the purchase of real property in the Area shall be (non-exclusive, if not checked):

Exclusive. Buyer may not enter into an agency relationship with another real estate firm during the Term for the purchase of real property in the Area (“Exclusive Agency”); or

Non-Exclusive. Buyer may enter into a non-exclusive agency relationship with other real estate firms during the Term (“Non-Exclusive Agency”).

4. LIMITED DUAL AGENCY.

a. Buyer Broker as Limited Dual Agent. If initialed below, Buyer consents to Buyer Broker and Supervising Broker acting as limited dual agents in the sale of property that is listed by Buyer Broker. Buyer acknowledges that as a limited dual agent, RCW 18.86.060 prohibits Buyer Broker from advocating terms favorable to Buyer to the detriment of the seller and further limits Buyer Broker’s representation of Buyer.

Buyer’s Initials Date Buyer’s Initials Date

b. Firm Limited Dual Agency. If Buyer purchases a property listed by one of Firm’s brokers other than Buyer Broker (“Listing Broker”), Buyer consents to any Supervising Broker, who also supervises Listing Broker, acting as a limited dual agent.

5. COMPENSATION. Buyer acknowledges that there are no standard compensation rates and the compensation in this Agreement is fully negotiable and not set by law. The compensation for Buyer Brokerage Firm’s services (the “Compensation”) shall be:

a. _____ % of purchase price; \$ _____; other: _____

b. If Buyer Broker is a limited dual agent and represents both Buyer and the seller, then the Compensation shall be (equal to the amount in subsection 5(a) if not filled in):

_____ % of purchase price; \$ _____; other: _____

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- 6. SELLER COMPENSATION OFFER.** 38
- A seller may, but is not required to, offer compensation to Firm for representing Buyer in the purchase of seller's real property ("Seller's Offer"). Seller's Offer is disclosed in the listing, shall be stated in the purchase and sale agreement, and may be accepted by Buyer, on behalf of Firm, in the purchase and sale agreement. 39 40 41
- a. Seller's Offer Equal to Compensation. If Seller's Offer is equal to the Compensation, Buyer shall accept Seller's Offer and Buyer shall not be obligated to separately pay Firm. 42 43
- b. Seller's Offer Greater Than Compensation. If Seller's Offer is greater than the Compensation, Buyer shall accept Seller's Offer and Buyer shall not be obligated to separately pay Firm. The amount of Seller's Offer that is greater than the Compensation shall be: 44 45 46
- Paid to Firm; 47
- Credited to Buyer (to the extent allowed by Buyer's lender) and any non-allowed amount paid to Firm; 48
- Credited to the seller; or 49
- Other: _____ 50
- c. Seller's Offer Less Than Compensation. If Seller's Offer is less than the Compensation, Buyer shall accept Seller's Offer (if any) and: 51 52
- Pay the balance of the Compensation to Firm at closing; 53
- Request that the seller pay the balance of the Compensation to Firm as a part of Buyer's offer to purchase the property; or 54 55
- Other: _____ 56
- 7. COMPENSATION TERMS.** The Compensation is due (except as otherwise agreed herein) when Buyer purchases real property located in the Area during the Term and: 57 58
- a. Exclusive Agency. For Exclusive Agency, the purchase closes. 59
- b. Non-Exclusive Agency. For Non-Exclusive Agency, the purchase closes, and Buyer Brokerage Firm represents Buyer in such purchase as indicated on the purchase and sale agreement. 60 61
- c. Compensation After Expiration. If within _____ days (60 days if not filled in) after the Term: 62
- i. Exclusive Agency. Buyer purchases a property that was brought to the attention of Buyer during the Term by the efforts or actions of Firm, or through information secured directly or indirectly from or through Firm; or a property that Buyer inquired about to Firm during the Term. Compensation is due when the purchase closes. 63 64 65
- ii. Non-Exclusive Agency. Buyer purchases a property for which Buyer Brokerage Firm presented a written offer to the seller on behalf of Buyer during the Term. Compensation is due when the purchase closes. 66 67
- Provided that in either event, if Buyer or the seller pays compensation to another real estate firm representing Buyer in conjunction with such a sale, the amount of compensation payable to Firm shall be reduced by the amount paid to such other firm(s). 68 69 70
- d. Additional Consent. Buyer consents to Firm receiving compensation from more than one party and to sharing of compensation between firms, provided that any terms and amounts offered to or by Firm are disclosed as required by RCW 18.86.030 and any amounts paid to Firm reduce Buyer's obligation to Firm. 71 72 73
- e. Cancellation Without Legal Cause. For Exclusive Agency, if Buyer cancels this Agreement without legal cause, Buyer may be liable for damages incurred by Firm as a result of such cancellation. 74 75
- 8. SHOWINGS, LISTINGS, VA FINANCING.** 76
- a. Showing Properties. Buyer Broker shall; shall not (shall if not checked) be obligated to show properties to Buyer for which there is no Seller's Offer and Buyer has not agreed to pay the Compensation. 77 78
- b. Listings. Buyer Broker shall bring listings to the attention of Buyer, regardless of Seller's Offer. 79
- Exceptions: _____ 80
- c. VA Financing. Due to VA regulations, if Buyer is obtaining VA financing, the Compensation must be paid by the seller. 81

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- 9. NO WARRANTIES OR REPRESENTATIONS.** Firm makes no warranties or representations regarding the value of or the suitability of any property for Buyer's purposes. Buyer agrees to be responsible for making all inspections and investigations necessary to satisfy Buyer as to the property's suitability and value. 82-84
- 10. INSPECTION RECOMMENDED.** Firm recommends that any offer to purchase a property be conditioned on an inspection of the property and its improvements conducted by a licensed inspector. Firm and Buyer Broker have no expertise in these matters and Buyer is solely responsible for interviewing and selecting all inspectors. 85-87
- 11. NO DISTRESSED HOME CONVEYANCE.** Firm will not represent or assist Buyer in a transaction that is a "Distressed Home Conveyance" as defined by Chapter 61.34 RCW unless otherwise agreed in writing. A "Distressed Home Conveyance" is a transaction where a buyer purchases property from a "Distressed Homeowner" (defined by Chapter 61.34 RCW), allows the Distressed Homeowner to continue to occupy the property, and promises to convey the property back to the Distressed Homeowner or promises the Distressed Homeowner an interest in, or portion of the proceeds from a resale of the property. 88-93
- 12. FAIR HOUSING.** Local, state, and federal fair housing laws prohibit discrimination based on sex, marital status, sexual orientation, gender identity, race, creed, color, religion, caste, national origin, citizenship or immigration status, families with children status, familial status, honorably discharged veteran or military status, the presence of any sensory, mental, or physical disability, or the use of a support or service animal by a person with a disability. 94-97
- 13. ATTORNEYS' FEES.** In the event either party employs an attorney to enforce any terms of this Agreement and is successful, the other party agrees to pay reasonable attorneys' fees. In the event of trial, the successful party shall be entitled to an award of attorneys' fees and expenses; the amount of the attorneys' fees and expenses shall be fixed by the court. The venue of any suit shall be the county in which the property is located. 98-101
- 14. OTHER.** 102-110

Buyer's Signature Date

Buyer's Signature Date

Buyer E-mail Address

Buyer Phone Number

Buyer Brokerage Firm

Buyer Broker's Signature Date

Buyer Brokerage Firm License Number

Buyer Broker License Number

Buyer Broker E-mail Address

Buyer Broker Phone Number

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