

Buyer's Broker Representation Agreements FAQs

1. Is there a standard buyer's broker representation agreement?

There is no standard form of a buyer's broker representation agreement. Each brokerage may develop one for its own purposes upon advice of counsel. Some trade associations offer a template form. REBNY offers checklists to help a brokerage create one.

2. What must all buyer's broker representation agreements contain?

All buyer's broker representation agreements must contain:

- The specific amount or rate of compensation and how it will be determined. The amount must be specific, easily verifiable, and not open-ended.
- A provision prohibiting the broker from receiving compensation from any source that exceeds the amount/rate agreed to with the buyer.
- A clear statement that broker fees and commissions are not set by law and are fully negotiable.

3. Can these agreements be exclusive or non-exclusive? If so, what is the difference between an exclusive and non-exclusive buyer's broker representation agreement?

A buyer's broker agreement could be on an exclusive basis; that is, an exclusive relationship for a determined period of time such as six months. Or, these agreements could be on a non-exclusive basis; that is, a non-exclusive relationship for a specific property or region.

4. What if a buyer enters into more than one agreement?

A buyer may enter into multiple non-exclusive agreements with separate brokers, each concentrating on a specific property or region. And a buyer may even enter into multiple exclusive agreements provided that the focus of the agreement is restrictive enough that there is no overlap between the multiple exclusive agreements.

5. How is exclusivity and non-exclusivity handled in the REBNY buyer's broker agreement checklist?

In most cases, a buyer will sign only one agreement with a broker. Accordingly, the REBNY buyer's broker agreement checklist includes an affirmation by the buyer that she has not entered in any exclusive or non-exclusive agreement with any other broker, nor will do so during the term of the agreement.

6. Who needs to sign the buyer's broker representation agreement?

The buyer's broker representation agreement must be signed by all buyers of real property (including cooperative housing) and the broker representing the buyer in such purchase.

7. I represent buyers for units in new developments. Do I need to have the buyer sign the agreement?

Yes, brokers representing buyers of resale and new development properties are required to have a buyer's broker agreement in place, effective January 13, 2025.

8. I represent tenants. Do I need to have an agreement?

Brokers representing tenants seeking rental properties do not need to have such an agreement in place.

9. When is it required to be signed by the buyer?

Prior to all showings of property whether the showing is in-person or virtually (e.g, through a broker-assisted video call). The best practice is to have the agreement signed before any listings are sent to the buyer and certainly before any showing.

10. Is a buyer broker agreement needed for pre-recorded virtual tours?

No, a buyer broker agreement will not be needed for pre-recorded virtual tours.

11. Must I show the buyer's broker agreement to the listing agent prior to showing?

There is no RLS requirement that the buyer's broker show the agreement to the listing agent prior to showing.

12. Can a listing agent ask for a copy of the buyer's broker agreement?

The agreement is a contract between the buyer's broker and the buyer, and it would be inappropriate for a listing agent to request a copy. However, a listing agent could certainly inquire whether the buyer's broker has a signed agreement with her buyer prior to showing.

13. How will this requirement be enforced?

The RLS will not collect buyer's broker agreements, but the RLS must enforce the agreements' existence and ensure that all required components are included. Similar to listing agreements, the RLS may request a copy of the agreement if, among other circumstances, improper practice is reported.

14. What happens if the buyer refuses to sign the agreement, and a broker decides to represent the buyer anyway? What are the risks?

Aside from violating the RLS requirement and being subjected to fines and penalties including expulsion from the RLS, a broker runs the risk of not having any assurance of being compensated for her services by the buyer, where applicable.

15. Do I still need to have my buyer sign a buyer representation agreement if I have been working with the buyer prior to the set implementation date?

Yes, as of January 13, 2025, a buyer's broker agreement will need to be signed even if a broker has been working with the buyer before that date.

16. What if the buyer and a broker cannot reach an agreement as to the amount of broker compensation that should be paid as a buyer agent?

The broker may decline to represent the buyer.

17. I am the listing agent and an unrepresented buyer shows up at my open house. Am I allowed to show the property to the unrepresented buyer?

Yes, the unrepresented buyer may enter the open house and view the property. The listing agent is hosting the open house on behalf of and representing the seller. Therefore, the listing agent is not required to enter into a buyer's broker representation agreement at the open house. Should this unrepresented buyer request representation at a later time, then the listing agent would be required to enter into a buyer representation agreement with the buyer