

HOME SELLER SUGGESTIONS FOR LISTING BROKER NEGOTIATIONS



SECTION	WHEN THEY SAY THIS	CONSIDER THIS INSTEAD
Termination	"This contract may only be canceled by mutual agreement of the parties."	"Either Seller or the Broker may terminate this Contract prior to its expiration date. If canceled, while not under contract for a property, then neither party will be liable for any obligations under this contract."
Marketing	"Seller has the additional options of allowing: (1) an automated "valuation" of Seller's property, which may be lower than Seller's asking price, to appear alongside the property on websites operated by other brokers; and (2) comments about Seller's property to appear on these websites, including negative comments, made by persons other than the broker operating the website. At this time, however, Seller declines options (1) and (2), understanding that Seller may change these selections at any time."	Do not agree to this. Some Brokers may advise against listing your property on popular real estate sites for various reasons. However, this tactic reduces market visibility, reduces your potential profit, and increases the likelihood of dual agency, potentially leading to you paying the brokerage double fees.
Broker Compensation	"Seller agrees to pay Broker's compensation whether Broker, Seller, or anyone sells the Property."	Do not agree to this. Consider including an "Exclusion List" of friends, neighbors, and potential buyers whom you met so that if they buy the home, you would not owe any broker fees.
	"Seller agrees to pay Broker's compensation in full upon the happening of any of the following events: 1. The closing of the sale; 2. Seller's refusal to close the sale; or 3. Seller's refusal to sell at the price and terms specified above."	Remove (2) and (3). If you are unable to close for unforeseen reasons, you should not be liable to pay your broker any amount and certainly not 6%.
	"Seller hereby permits Broker to share part of Broker's compensation with other real estate Brokers, including Brokers representing only the Buyer." OR "Broker __SHALL or __SHALL NOT offer compensation to cooperating Brokers"	Remove this section. Brokers should not be permitted to share their compensation with other brokers. This causes buyer broker fees to be artificially inflated and costs you lots of money. OR Select SHALL NOT
	"Seller agrees to pay Broker, as Broker's compensation, _____ percent (%) of the selling price or \$_____ whichever is greater, if Seller sells or agrees to sell the Property during the term of this Contract."	Seller agrees to pay Broker, as Broker's compensation: <input type="checkbox"/> _____% of net sales price (deduct seller concessions from the final number), or <input type="checkbox"/> \$_____ flat fee. <input type="checkbox"/> other (describe) _____" Commission doesn't have to be a percentage. Utilize this section to negotiate lower fees as a Seller and ensure that concessions are deducted before landing on fee structures.
	"If Buyer is unrepresented, Seller agrees to compensate listing broker an additional \$_____ ."	Do not agree to this or insert a \$0 in this section. If there's no Buyer Broker involved, it doesn't necessarily mean more work for the Listing broker, especially if the Buyer has hired an attorney. Additionally, if the Broker now represents the Seller and Buyer (Dual Agency) you won't receive impartial negotiating advice.
	"Seller agrees to pay Broker an administration fee of \$_____ upon closing."	Evaluate these fees carefully, as they are often 'junk fees' where the brokerage passes along their operating costs in addition to their commission. These fees may be labeled as Transaction Fees, Transaction Coordinator Fees, or Regulatory Compliance Fees.

*CAARE is not your attorney and is not licensed to provide you with legal advice. These suggested contract changes should be reviewed by your attorney. We are not familiar with your state's laws surrounding these matters and only an attorney in your state may properly advise you. The purpose of these suggestions is to call attention to some of the contract terms we believe are anti consumer and anticompetitive. How you address these terms is a matter of law and is to be determined between you and your attorney

Arbitration & Class Action Lawsuits	Any terms related to arbitration or participation in class action lawsuits.	We recommend not using brokerages or service providers that use these terms. Arbitration agreements and prohibitions on joining class action cases are very harmful and strip you of important rights and damages.
Closing	<p>“Seller’s choice for closing services: (Check one.)</p> <input type="checkbox"/> Seller directs Broker to arrange for a qualified closing agent to conduct the closing. <input type="checkbox"/> Seller shall arrange for a qualified closing agent or Seller’s attorney to conduct the closing.”	Consider this instead: “Broker agrees to use their due diligence to shop and compare title agents and recommend three firms that are not affiliated with the broker or agent and for which neither the broker nor the agent have any financial motivations for recommending.”
Dual Agency	“Seller will agree to dual or designated representation and will consider offers made by buyers represented by the Broker.”	Consider this instead: “If a dual agency or designated agency relationship happens, the Seller may cancel this contract for that Buyer’s offer. The Seller may then hire a different Broker to represent them. Neither party will be responsible for any obligations in this contract for this specific offer.
Home Warranties	“ <input type="checkbox"/> Seller agrees to purchase a home warranty.”	Don’t agree to this. Not only are some home warranty companies poorly rated, they often include broker kickbacks when you agree to buy one.
Office Exclusive Listings	“The undersigned request that the Property be withheld from the Multiple Listing Service for _____ days. During this time, the Property will be exclusively marketed to the Broker’s agents.”	“Office Exclusives” are often pitched with misleading benefits like, “It’s a way to get agent feedback before going public” or “It helps sell your property without the hassle of showings.” In reality, these tactics are anti-consumer schemes designed to secure double commissions. They severely limit your home’s market exposure and increase the risk of a dual agency situation.
Additional Services	“Seller directs Broker to arrange for a qualified closing agent to conduct the closing.”	Broker and Agent agree to assist the Seller in shopping for and comparing pricing for lending, title, warranty and insurance services. The Broker/Agent will recommend a minimum of three providers in each category, ensuring that none are affiliated or offering additional compensation to the Broker or Agent.

CONSIDER ADDING

Referral Fees	“Neither the Broker nor Agent shall accept or pay any referral fees on any transactions that involve the Seller.”	Referral fees can significantly limit your ability to negotiate with your agent. They might be paying 25-50% in referral fees to another agent, a relocation company, or a “best agent” website. If such agreement is made before you meet the agent, they must disclose this to you so you can choose another agent for better negotiation power.
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What is Dual & Designated Agency?

Dual and designated agency are when the Broker claims to represent both the Buyer and Seller in the same transaction (or two Buyers in the same transaction), but there is really no “representation” at all. The broker is incentivized to limit the market exposure of your house and they are prohibited from negotiating on your behalf. Dual and Designated agency are the source of most consumer complaints received by CAARE. We suggest that you decline this type of representation.

Why is your advice different than what my agent told me?

The real estate industry has been doing things the same way for many years. While some agents really get how to make changes that better serve their clients, others might be resistant to change or believe their old methods are still the best. If you ever come across something that seems off or you're unsure while discussing plans with your agent, please don't hesitate to reach out to us anytime.

We're here to help!
info@caare.org

Stop Offering Buyer Broker Commission

Historically, sellers often agreed to pay high commissions, which were split between the listing broker and the buyer's broker. Most buyers didn't negotiate their broker fees, and those who did often had contracts allowing brokers to keep any extra commissions. This led to sellers and buyers paying billions more in commissions than necessary.

With the recent NAR settlement, buyers now negotiate their broker fees upfront, and brokers cannot collect more than agreed.

It's more advantageous not to set fees upfront. Instead, allow buyers to negotiate directly with you by requesting seller concessions in their offers. This approach prevents agents from receiving excess commissions, preserves the seller's equity, and helps the buyer cover costs while still creating a true free market for buyer broker commissions.

What is CAARE?

Consumer Advocates in American Real Estate is the only nonprofit in the nation dedicated to consumer protection in the residential brokerage profession.

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