

The Revised Purchase Contract Includes a Section to Specify Buyer Agent Compensation

In my August 1st column, archived at JimSmithColumns.com, I wrote about the changes made to the listing contract and buyer agent contract to comply with the NAR settlement. Instead of the listing agent now *sharing his commission*, it specifies how much compensation the *seller* wishes to offer to a buyer's agent.

This week, I'll explain how the new purchase contract has a section in which it is stated how the buyer's agent is to be compensated.



agent agreement (the "Exclusive Right-to-Buy Listing Contract"), it can be **amended** to reflect the compensation included in the final purchase contract.

Let's say, for example, that the buyer has signed a buyer agency agreement with 2.5% as the promised compensation to their broker. A seller has offered 2.0%. In discussion prior to writing the offer, the buyer might negotiate an amendment to their buyer agency agreement setting the commission rate at 2% and writing that amount in Sec. 29.1 of the purchase contract. Or, they could decide to write 2.5% in Sec. 29.1 anyway and see if the seller will sign it. If the seller counters the offer, changing it to 2.0%, and if the seller wants to accept the counterproposal, they can still amend the buyer agency agreement before signing the counterproposal — or the buyer can pay his agent the other 0.5%.

A listing of mine that just went under contract offered 2.5% compensation to the buyer's agent. The submitted contract showed 2.5% being paid by seller and 0.3% being paid by buyer. Obviously the buyer agency contract specified 2.8%.

The opposite scenario could be true. The buyer may have signed a buyer agency agreement in which the rate is 2.5%, but the seller has advertised that they will pay 2.8%. The rule is that the buyer's broker can't accept more than is specified in their signed agreement with their buyer. **No problem** — amend the buyer agency agreement to 2.8%

29. BUYER'S BROKERAGE FIRM COMPENSATION. Buyer's brokerage firm's compensation will be paid, at Closing, as follows:
 29.1. _____% of the Purchase Price or \$ _____ by Seller. Buyer's brokerage firm is an intended third-party beneficiary under this provision only. The amount paid by Seller under this provision is in addition to any other amounts Seller is paying on behalf of Buyer elsewhere in this Contract.
 29.2. _____% of the Purchase Price or \$ _____ by Buyer pursuant to a separate agreement between Buyer and Buyer's brokerage firm. This amount may be modified between Buyer and Buyer's brokerage firm outside of this Contract.
 29.3. _____% of the Purchase Price or \$ _____ by a separate agreement between Buyer's brokerage firm and Seller's brokerage firm.

before writing the offer. However, if there's a bidding war, the buyer and broker might decide to write 2.5% into their offer, hoping that competing offers will not include that 0.3% savings for the seller.

Buyers will likely say upfront that they don't want to pay a dime (or more than a nominal amount) to the broker representing them in their home search. The smart broker (which, of course, includes all Golden Real Estate brokers) will point out Sec. 29.1 and **show them this article**, adding that it has become a "buyer's market" and that no seller who wants to sell her or his home is going to demand zero compensation to buyer brokers. My suggestion is to defer the conversation about adjusting the buyer compensation until the buyer is ready to make an offer on a house they want.

Meanwhile, a broker wanting to represent a buyer needs to be confi-

dent enough of the value he or she provides to the buyer to say that they won't work with that buyer unless they agree to some minimum compensation for that value.

For me personally, I would put that minimum at 2.0%, given the value that every buyer gets from me — knowledgeable, experienced representation and negotiating skill, use of our free moving truck, free moving boxes and packing materials, and team members at their disposal, including our in-house handyman, cleaning personnel, loan officers, inspectors and more.

All of us at Golden Real Estate are aware of the value we provide to our clients, both buyers and sellers, and we look forward to serving both with the skill that we know we have. If you want proof, click on the "Testimonials" tab on our website, www.GoldenRealEstate.com. We intend to earn *your* good review!

Section 29 of the new **Contract to Buy & Sell** is shown above right.

As shown below in this week's featured listings, many ads, brochures and websites for listings will now contain the notice that "**Seller offers ___% compensation to buyer brokers.**"

Sec. 29.1 is where the offered compensation would be inserted. However, if none is offered, the buyer's **demand** for compensation of their agent can still be inserted there. **The fact that no compensation has been offered doesn't mean a buyer can't demand one in his or her Contract to Buy & Sell.**

One complication of this strategy is that the buyer will have already signed a buyer agency agreement with his or her broker, stating the commission amount, if any, that the **buyer** is willing to pay, and if the seller falls short of that percentage or dollar amount, the buyer must make up the difference.

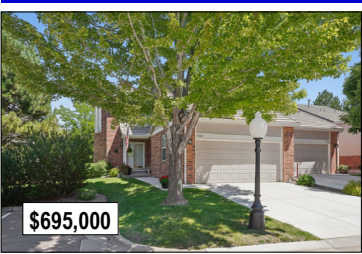
But, not to worry — there's a simple workaround for that. At any time during the term of the buyer

Has Your Time Come to Enjoy Mountain Life?

This 3-bedroom, 2-bath home at **48 Lang Street** is in Twin Lakes, halfway between Leadville and Buena Vista at the foot of Independence Pass. It could be your escape from the Front Range rat race! This is a year-round mountain home, solar-powered, with a high-tech greenhouse with "earth battery" for near year-round veggies! Enjoy the quiet mountain life of Twin Lakes Village (population 23). In summer, enjoy the drive over Independence Pass to Aspen. In winter, drive over Fremont Pass to Copper Mountain. **Escape those I-70 traffic jams, too!** Closer to home, enjoy hiking the Colorado Trail, which passes through town. This home was built in 2000 with all the modern conveniences, yet you're in a historic and charming mountain town. **Thanks to high-speed CenturyLink internet, some of the residents have city jobs but work from home.** If you've been hankering for a slower lifestyle, this mountain home may be your escape. Visit www.TwinLakesHome.info to take a narrated video walk through of this home and see lots of photos, then come see it on **Sat., Aug. 31, 11-2.** **NOTE: Seller offers 2.8% commission to buyer's broker.**



3-BR Patio Home in Lone Tree Golf Community



Enjoy maintenance-free living in the quiet community called Masters Park. This townhome at **9444 Southern Hills Circle** is being sold by its original owners, who purchased the home 25 years ago. You'll like the updated kitchen and primary suite with its updated 5-piece bathroom and its spacious deck overlooking the green space behind. As you will see on its website, this home has been tastefully decorated, including, for example, the walls of the powder room painted by a local artist in a bamboo theme! It's a friendly community too, with get-togethers Monday evenings in the gazebo next to this home. The golf course is behind the homes down the street! Some furniture is available for purchase outside of closing. Look for the list with prices on the coffee table. Visit www.LoneTreeHome.info for interior and exterior photos, floor plans, a narrated video walk-through and an aerial video. **Greg Kraft** will be holding it open on **Saturday, Aug. 31st, 11 to 1**, or call **720-353-1922** to request a showing. **Note: Seller is offering 2.8% compensation to buyer's broker.**



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