

Zillow Introduces a Home 'Touring Agreement' That Doesn't Comply With Colorado Law

Ever since the March 15th announcement by the National Association of Realtors (NAR) that it had reached a settlement on the litigation against it regarding buyer agent commissions, brokers and brokerages have been trying to figure out how they can get buyers to sign an agreement of the type required by that settlement.

Such an agreement would have to provide for payment by buyers of the broker working on their behalf, and that agreement would have to be signed before an agent could show the buyer any homes for sale.

Zillow, which is now a brokerage, not merely a real estate listing website, thinks it has produced an agreement that buyers would be happy to sign, while satisfying that requirement. The essence of it is that it is *non-exclusive, lasts only seven days, and does not commit the buyer to paying anything.*

Although the "Touring Agreement" is copyrighted, the April 30th blog post by Errol Samuelson, Zillow's Chief Industry Development Officer, states that Zillow is "making it available for use to the entire residential real estate industry."

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REAL ESTATE TODAY



By JIM SMITH Realtor®

the one-page agreement, omitting only a non-discrimination clause and the signature lines.

In his blog post, Samuelson acknowledged that "the form of this agreement will vary by state, [but] we're calling on the industry to adopt a non-exclusive, limited-duration agreement for the initial tours conducted by an agent with a prospective buyer."

Unfortunately, this well-intended form does *not* comply with Colorado state law in two respects, according to Marcia Waters, who heads the Division of Real Estate at the Colorado Department of Regulatory Affairs, with whom I shared Zillow's agreement last week.

First, since it has not been approved by the Colorado Real Estate Commission (CREC), Zillow's form can only be used by brokers if it has been prepared by that broker's *own* lawyer. Second, it does not contain the required definitions of working relationships.

Although she didn't mention it, the form must also have a statement at the top stating that it is not a state-approved document.

I asked Waters what new or

NAR Releases Additional Rules Pursuant to Settlement

Heretofore, the only guidance brokers had regarding the NAR settlement was that the MLS could no longer display an offer of co-op compensation for listings and that brokers could not show listings to a buyer without first executing a written agreement with that buyer.

Last week we were advised of some additional rules that MLSs must follow. Here are the key takeaways:

MLSs may not "create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator's website for such purpose)" that includes "offers of compensation to buyer brokers or other buyer representatives."

MLS data may not be used "directly or indirectly" to create a

platform containing an offer of compensation, and, if that is done, the MLS must terminate the access to the MLS and MLS data by the offending broker or brokerage. That's a career-ending penalty.

Virtually every brokerage has its own website on which MLS listings are displayed. These websites must not, with or without MLS support, filter the display of listings to exclude individual listings based on the level of compensation offered or to exclude listings by specific brokerages or specific listing agents within a brokerage.

These new rules still don't bar the kind of websites we create for each listing from containing an offer of compensation. They also don't bar including compensation offers in property flyers or signs.

TOURING AGREEMENT

This Touring Agreement ("Agreement") is made by and between [Buyer Name] ("Buyer") and [Brokerage Name] ("Broker") for real property located in the following areas: [Tour Area (MSA, City or Zip)] ("Location").

1. Purpose of Agreement.

(a) The sole purpose of this Agreement is for Broker to: (i) consult with Buyer regarding specific properties; and (ii) assist Buyer in locating and touring properties. These activities collectively constitute the "Touring Services."

(b) In connection with providing the Touring Services, Broker shall adhere to any and all non-waivable duties required under applicable state law for real estate brokers working with a consumer in a non-agency capacity.

(c) Buyer and Broker agree that they are not entering into an agency relationship and Buyer is not a client.

2. Buyer's Acknowledgement. Buyer represents that Buyer has not signed an exclusive buyer brokerage agreement for the Location currently in force with another Broker.

3. Duration of Agreement. This Agreement is entered into this [Month] [Day], 20[year]. This Agreement shall expire in seven (7) days at 11:59 p.m. on [Month] [Day], 20[year].

4. No Fee for the Touring Services.

(a) Buyer shall not owe or pay Broker any fee for the Touring Services.

(b) If Broker is going to provide Buyer with brokerage services beyond the Touring Services, Buyer and Broker will enter into a separate agreement for such additional brokerage services. The fee or commission the parties agree to for those services are not set by law, are fully negotiable, and shall be documented in that agreement.

changed contracts the Division is working on to comply with the provisions of the NAR settlement, and she replied as follows:

"It is our position that the NAR settlement doesn't require any changes to our forms. With that said, the Forms Committee is working on some possible revisions to the listing contracts, the contract to buy and sell and the brokerage disclosure to buyer to provide further clarification about compensation. Those revisions will be considered by the Real Estate Commission at their non-rulemaking hearing for the forms in June." That meeting is at 9 a.m. on June 4th.

The requirements established by the NAR settlement are now set to take effect on August 17th.

I like the concept of Zillow's

proposed touring agreement, since the NAR settlement only specifies "an agreement." Having sent it to the Division of Real Estate and also to Frasca, Joiner, Goodman & Greenstein, PC, the law firm which serves Golden Real Estate and hundreds of other brokerages with legal forms not among those mandated by the CREC, I am hopeful that one or the other of them will produce a "showing agreement" that we can use. This is important, since buyers can't be expected to sign an "Exclusive Right to Buy" agreement just to see properties.

Without a document like that which is agreeable to buyers, we can expect that buyers will only call listing agents to see listed homes. That scenario would serve neither the industry nor the public.



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"Concentrate on giving, and the getting will take care of itself." —Anonymous