

Almost No Buyers Are Compensating Their Agents as Result of NAR Settlement

Leading up to the changes on August 17th which prohibited MLSs from displaying compensation for buyer brokers, I wrote that I would be surprised if any buyers ended up compensating their own agents. So, last week I did some research of my own and solicited input from others to see if my prediction had come true. It has.

I surveyed listing agents who had closings in September, and every one who replied said that their seller had compensated the broker representing the buyer of their listing.

My friends at **First Integrity Title** did a few "spot checks" on transactions which closed post-NAR settlement to confirm what they were hearing based on actual data. The challenge was that they would have to open every file individually, but the consensus was that, as I expected, the seller has continued to compensate the buyer's agent.

"It really has not changed from the past," I was told by **Pam Giaratano**, our sales rep at First Integrity Title.

Here is the response Pam got from her VP of Operations: "I can tell you that I've asked the same question multiple times; I'm just trying to understand how much has changed since the NAR settlement. I

can tell you that I am repeatedly told that people have not seen any buyers paying their own agents."



Here's the response from Pam's VP of Sales: "I looked at settlement statements for a dozen closed files, and the seller paid the buyer's agent's commission on all of them."

Pam asked her closers and lenders, and the consensus was that the seller still pays. One lender told Pam that they are still seeing the seller pay, but that sometimes if the seller is offering a buy-side compensation of 2.5% and the buyer's agent has an agreement at 2.8%, the buyer is making up the 0.3% difference, or it is included in the contract as a seller credit.

Here's what's happening: Sellers are being counseled by their agents to offer a buyer broker commission, because they realize that competing sellers are doing so, and they might drive away potential buyers if they don't also offer compensation.

At the closing table, it has always been that the commissions for both agents were listed separately on the seller's settlement statement. Naturally, some sellers would object to paying the buyer agent's commission, forgetting that their listing agreement provided that part of their listing agent's commission would be

offered to any agent who produced the buyer. The commission to the buyer's agent was coming out of the listing agent's pocket, but it sure looked like the seller, not his agent, was paying the buyer's agent.

As I predicted, nothing has changed except the wording. The revised "Exclusive Right to Sell" listing contract still includes the total commission to be paid at closing, but it also states how much the seller will pay the buyer's agent, and states that the listing commission will be reduced by that amount.

Of course, in a real estate transaction, what governs are the provisions in the "Contract to Buy & Sell" between the buyer and seller. Section 29 of that document breaks down the compensation paid to the buyer's agent by (1) the seller, (2) the buyer, and (3) the listing agent.

In some cases, the buyer's agent will find out what the seller is offering, since it is no longer displayed on the MLS. (My listings display that amount on the listing brochure and on a sign rider.) Regardless, the buyer's agent can submit a contract which specifies how much the seller will pay the buyer's agent, and the seller can counter that provision. It's simply another element of the offer to be negotiated between buyer and seller through their agents.

Just last month, to win a bidding war, one of our broker associates submitted a contract asking the seller to pay only 1.5%, which tells you not only that buyer broker compensation is negotiable but that the amount of buyer broker compensation is going down. That was predicted, and is coming true. We noted that the listing agent was paid 3%.

In the past, that listing probably would have displayed at least 2% buyer agent compensation in the MLS, and that amount would have been paid without negotiation or discussion.

So what did the plaintiffs in the NAR settlement expect to achieve, and what did they get?

At least in Colorado, they did *not*

relieve sellers from compensating buyer agents. Listing agents are probably getting the same compensation as before, but some sellers (like in the transaction mentioned above) *think* they are saving on the compensation to buyers' brokers.

But the truth is that when the commission for the buyer's agent is negotiated downward, *the seller does not benefit from that reduced commission*. Remember, the listing agreement specified the total commission paid to the listing agent, and it is reduced by the commission paid to the buyer's agent. If that commission is negotiated downward, the listing agent keeps the difference. *The seller doesn't benefit at all, unless he/she renegotiates the total commission in the listing contract.*

Overall, my broker associates and I are okay with the new rules. They clarify that the *seller* is paying both agents, not the broker. That makes the amount more transparent and thus more negotiable. With sign riders and listing brochures, it's not hard to inform buyer brokers of the compensation which the seller is offering, and the buyer can submit whatever compensation amount he or she wants in the contract to buy and sell.

Understanding Different 55+ Communities

Last week I was in a Zoom conversation with 14 of my high school classmates. We have been meeting like this every week since our 2020 reunion was canceled due to Covid. Three of us had moved into senior communities and we were answering questions about the options which we Baby Boomers face.

We are all healthy 77-year-olds (or thereabouts), and we all realize that the clock is ticking, that it's not a matter of *if* but *when* we will need some sort of assisted living. Should we "age in place," enter an "independent living" facility now, or wait until we need "assisted living"?

If you have 90 minutes of free time, I could share with you the URL of the recorded Zoom meeting, but for now, let me share some of the insights.

Laird lives at **Windcrest**, where he paid a 6-figure "entrance fee" and pays about \$4,000 per month rent for a 1-bedroom plus den apartment. He gets 30 meals per month in a dining room, but also has a kitchen for other meals. 90% of his entrance fee is returnable if he leaves or dies. One

thing I learned was that if by chance he runs out of money and can't afford the rent, it is taken out of his entrance fee instead of having to leave. If assisted living is needed later, he stays in the same apartment, but the services and rent increase dramatically.

"They promise this can be my home for life," Laird said.

Rita and I had moved into a pure rental 55+ community with no entrance fee. We paid no security deposit, and we got the first month free. We have since moved to a regular apartment building.

I shared what I had learned about **Vi at Highlands Ranch**, where you must be healthy with no degenerative disorders, but you are promised no increase in rent when/if you need to enter assisted living, nursing care or even memory care.

The entrance fees at both facilities are reduced if you agree to only 50% or none of it being returnable when you leave.

A classmate on the call sent us all a 943-word email on this topic. Read it at RealEstateToday.substack.com.

Habitat for Humanity's Pumpkin Patches Are Open

Every October, **Jeffco Interfaith Partners** sells pumpkins to raise money to sponsor a Habitat for Humanity home. In the past 20 years, they have funded over a dozen metro area Habitat homes.

The pumpkin patches are on the corner of **Garrison & Alameda** in Lakewood, and at **78th Avenue & Wadsworth** in Arvada. The pumpkins are more expensive than elsewhere, but 40% of the purchase price is tax deductible, and it's an easy way to donate to a worthy charity.

And the selection of pumpkins is great! They also sell carving kits and other Halloween paraphernalia.



Hometown Service Delivered with Integrity
Promoting and Modeling Environmental Responsibility

Jim Smith

Broker/Owner, 303-525-1851
Jim@GoldenRealEstate.com
1214 Washington Ave., Golden

Broker Associates:

JIM SWANSON, 303-929-2727
CHUCK BROWN, 303-885-7855
DAVID DLUGASCH, 303-908-4835
GREG KRAFT, 720-353-1922
AUSTIN POTTORFF, 970-281-9071
KATHY JONKE, 303-990-7428

In-house Lender: WENDY RENEE, 303-868-1903



Starting This Week, "Real Estate Today" Appears Every Thursday in The Denver Gazette