



# LEGAL HOTLINE Q&A

FROM GET THE FACTS, December 26, 2023

## Question:

I am the listing agent. I was contacted by a buyer who is an attorney. She wants to represent herself with hopes of getting a discount on the price because she says the seller won't have to pay a Buyer agent commission. My questions: Am I supposed to be writing up her contract? If I'm not supposed to write her offer, then do I just give her the forms? If I am supposed to write her offer, do I just use the forms for any contingencies she is wanting in her contract. Am I supposed to ask her whether she wants, for example, to have the inspection or title contingencies? How do I protect myself if she chooses no contingencies, and then later is disappointed about her purchase? If she is expecting a discount because she wants the seller to not pay the buyer's agent commission, then do I add Form 41C even if she doesn't know specifically that's the form to ask to use?

## Answer:

Broker is a member of NWMLS which means, based on the boiler plate language of seller's listing agreement, that seller made a distinct offer of compensation to the listing firm and to the buyer broker firm. An unrepresented buyer brings no buyer broker to the transaction and thus, there is no buyer broker compensation. Listing broker, working as seller's exclusive agent, may write the offer for buyer. Broker should deliver a copy of the Agency Law pamphlet to buyer and make clear to buyer, through written and oral disclosure, that buyer is unrepresented and that listing broker represents seller exclusively.

Assuming buyer wants to proceed, broker should listen to buyer's description of the offer terms buyer wants to submit and broker should draft buyer's offer consistent with those terms. Broker should not coach, advise or advocate for buyer but rather, should listen to buyer's description of what buyer wants in buyer's offer and draft buyer's offer accordingly. Broker should advise buyer, in writing, to seek the advice of legal counsel with respect to the terms of buyer's offer, reminding buyer that buyer is unrepresented.



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## Answer Continued:

Use of Form 41C is unnecessary in this transaction because there is no buyer brokerage firm and thus no buyer brokerage compensation. Listing broker should complete the Agency Disclosure provision of the PSA to indicate that buyer is unrepresented and that seller is represented by listing broker. Under buyer's signature, broker should leave blank the spaces where the name and contact information of buyer's broker and firm would otherwise be written. Listing broker's compensation is determined by the provision of the NWMLS listing agreement identifying compensation payable to the listing firm if buyer is unrepresented. The blanks in Form 21, paragraph 17 can be lined through since there is no buyer brokerage compensation in this transaction.

When buyer signs buyer's offer, listing broker should present the offer to seller explaining to seller that if seller accepts buyer's offer, seller will owe the compensation to listing firm that seller offered to listing firm, in the listing agreement, in the section of the listing agreement related to the listing firm compensation if a buyer is unrepresented.

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