



THE **NAR Settlement** AND **Recent Legislation Drive Changes** TO THE **GAR Forms**

On July 1, GAR introduced new forms to comply with the terms of the NAR settlement. While there are major changes, adjusting to the NAR settlement should be easier for Georgia REALTORS® than REALTORS® in other states. This is because our forms have long provided for real estate commissions to be paid for by both sellers and buyers. More

importantly, Georgia brokers who wanted to represent buyers in a client relationship were required under the Brokerage Relationships in Real Estate Transactions Act (“BRRETA”) to have written agreements with their clients which disclosed, among other things, how the broker would be compensated. As such, buyer’s brokers are already used to explaining their value to buyers and getting them to sign Buyer Brokerage Engagement Agreements. Therefore, having to adjust to the NAR settlement requirement that REALTORS® enter into a written agreement regarding their compensation prior to showing buyers property should be relatively easy for Georgia REALTORS®. (NOTE: In some states, the seller was responsible for paying all of the commissions, and REALTORS® now have to learn for the first time how to get buyers to sign brokerage engagement agreements.)

While this puts Georgia REALTORS® ahead of the game, there are still changes that may take some getting used to. Let’s take a look at the most significant of these changes. This article will also review some forms changes resulting from changes in legislation.

{1} CERTAIN NEW DISCLOSURES INCLUDED IN THE GAR FORMS

The NAR settlement requires that brokerage engagements and compensation agreements with customers include the disclosure “Commissions are negotiable and are not set by state law”. This disclosure has been added to all of the GAR brokerage engagement agreements. However, the GAR Forms Committee felt that

this disclosure alone could be confusing because while commissions are negotiable across our industry, it does not mean that individual REALTORS® must negotiate the commissions they charge in every transaction. As a result, the following companion statement was made along with the disclosure: “However, this does not obligate individual licensees and brokerage firms to necessarily negotiate their Compensation”.

{2} THE USE OF THE WORD “COMMISSION” WAS CHANGED TO “COMPENSATION FOR PROFESSIONAL SERVICES” OR “COMPENSATION”

The GAR Forms Committee changed the word “commission” to “compensation for professional services” or “compensation” throughout our GAR Forms. While it may take a year or two for the change to be made to all GAR Forms, the Committee believes that the word “compensation” more accurately describes all of the different financial arrangements REALTORS® may enter into in selling their services.

{3} AGREEMENT TO WORK WITH BUYER AS A CUSTOMER {GAR Form F116}

a. Compensation Language was Added to Customer Agreements. The NAR settlement requires REALTORS® to have written compensation agreements with buyer customers and clients with whom they are working before they are shown properties. As a result, GAR redrafted its Agreement to Work

SETH G. WEISSMAN

is GAR general counsel and senior partner of the law firm of Weissman P.C.

with Buyer as a Customer to include compensation language. Under the NAR Settlement, the compensation a buyer's broker may receive from a source other than the buyer must also be approved by the customer or client. Therefore, the new compensation language is broken into three different sections.

Section A.4.B. first specifies the compensation to be paid by the buyer to the buyer's broker and is set forth below.

A.4.B. Compensation to Buyer's Broker: Buyer agrees to pay Buyer's Broker the Compensation set forth below at the closing of any Contract to Purchase (as that term is hereinafter defined).

- _____ percent (____%) of the sales price;
- \$ _____;
- (other) _____.

Section A.4.C. then addresses the maximum compensation the buyer's broker can receive from the seller or seller's broker. This amount must be specific. It cannot be something imprecise such as "I give permission for the buyer's broker to receive any compensation the seller or seller's broker agrees to pay".

This section is set forth below.

A.4.C. Optional Compensation from Seller or Seller's Broker to Buyer's Broker: Buyer hereby

approves or disapproves Buyer's Broker receiving Compensation from Seller or Seller's Broker. Nothing herein should be interpreted as a promise by Seller or Seller's Broker to pay or offer to pay Compensation to Buyer's Broker herein.

If Buyer approves such Compensation being paid by the Seller and/or Seller's Broker to the Buyer's Broker, the maximum amount the Buyer's Broker may receive from Seller and/or Seller's Broker is as follows:

- _____ percent (____%) of the sales price;
- \$ _____;
- (other) _____.

So, for example, if the broker working with the customer has a right to receive compensation up to eight (8) lollipops from the seller or seller's broker, it would be specified above. The ability of the broker to receive a bonus would also be specified in the section above marked "other". This section also makes it clear that while the buyer's broker may collect compensation from other sources, no promise is being made that other parties will in fact pay such compensation.

The third section, Section A.4.D. addresses whether any compensation paid by the seller or seller's broker reduces the compensation to be paid by the buyer, is in addition to it, or is some combination of the two. This section is set forth below.

