

Guidelines for the Preparation & Use of the Pennsylvania Association of Realtors® Buyer Agency Contract (Form BAC)

General Notes on Usage of PAR Standard Forms

The Pennsylvania Association of Realtors® Standard Forms are developed by the PAR Standard Forms Committee for use in a wide variety of transactions and market areas. To provide maximum flexibility to the parties, many provisions contain blank spaces that can be filled in as appropriate. Further, it is helpful to remember that where pre-printed language is not agreeable to the parties it can be crossed out and/or modified, with the parties *dating and initialing the change in the margins*. [As a general rule, text added by the parties that changes pre-printed text, or pre-printed text altered by the parties, will prevail over pre-printed language should a dispute arise.]

As stated in the title, these are only *guidelines* for the proper use of this form. The Guidelines presented here should be used in conjunction with, and as a supplement to, your professional education, and are in no way meant to substitute for proper professional education. Seek guidance from your Broker and/or your legal counsel if you have any questions about the proper use of this or any PAR form in a transaction.

To make these Guidelines more useful there may be helpful “extras” added to the main text. Many of the “NOTE” or “Practice Tip” items you will see are based, in part, on the experiences of PAR members and legal counsel, and are designed to point out some of the more practical items involved in filling out this form.

Some Standard Forms contain **Notices & Information** paragraphs. Some of these items are legally required notices, while others are designed to educate the parties (and their agents) about particular aspects of the law. Make sure to familiarize yourself with the contents of these pages, so you can direct the parties to the appropriate information.

Heading

The Broker and licensee(s) should fill in their names and contact information. These include the real estate firm or company after “Broker (Company)” and the full name of the licensee obtaining the listing in the blank after “Licensee(s).”

Note: The name of the Broker that is being filled in should be the name of the company (brokerage), not the name of the Broker.

Practice Tip: If more than one licensee is representing the Buyer, licensees should write in their names and contact information.

BUYER(S)

Starting next to the word “BUYER,” insert the full legal name or names of Buyer(s) in ALL CAPITAL LETTERS.

Practice Tip: Make sure that you determine all Buyers of the property and that they all fill out and sign the Buyer Agency Contract.

Other Agency Contracts

The NAR Code of Ethics requires that its member-Brokers ask whether a consumer is currently subject to another exclusive representation agreement before entering into an agreement with them. That question is asked in the heading, with an opportunity for the buyer to explain if the answer is “yes.” If a buyer is subject to other contracts at the time he signs an “exclusive” contract with you, he may end up owing multiple fees – sure to cause a problem in the distribution of fees at closing.

Note: There are many ethical and legal questions that should be answered before discussing the representation of a buyer currently subject to an exclusive representation agreement. Always consult your Broker or counsel before entering into an agreement under these circumstances.

This form is designed to be a binding contract for both the broker and the buyer. Neither side has an automatic right to terminate and walk away from the contract unless both sides negotiate that sort of term into the contract. If you aren’t entirely sure about locking this buyer into a long term contract – or the buyer doesn’t seem sure about wanting to be in a long term contract with you – there are at least 4 ways to handle it. (1) Sign the exclusive contract for a short time period – maybe a couple of weeks. (2) Provide a cancellation provision where one side or the other can cancel after a certain period of time. (3) Use PAR Form NBA, the Non-Exclusive Buyer Agency contract to establish the broker as a buyer agent for any properties shown by the broker without requiring the broker and buyer work together on any other properties if they don’t want to. (4) Establish an oral non-exclusive contract with the client, using Form NBA as a “written memorandum” of your discussion.

Definitely DON’T address a discomfort with a buyer by simply deciding to not develop any buyer agency agreement. While the Real Estate Licensing and Registration Act (RELRA) does permit brokers to provide services prior to getting a signed agreement, it also says that the broker isn’t entitled to collect a fee without an agreement. Don’t get caught trying to get your representation agreement signed at the same time as the Agreement of Sale. That probably isn’t the best time to first bring up that the buyer might owe a fee of some sort.

Remember that you only use this form if you are, in fact, representing the buyer as an exclusive buyer agent. For non-exclusive agency, use the Non-Exclusive Buyer Agency contract (Form NBA). If you are working as a transaction licensee for both buyer and seller, you would want to use the Transaction Licensee Contract (Form TLC).

Paragraph 1: STARTING AND ENDING DATES OF BUYER AGENCY CONTRACT (ALSO CALLED “TERM”)

Subparagraph (A): RELRA Requirements

RELRA requires a statement that the length of a buyer agency contract is negotiated between the buyer and broker, which is provided here.

Subparagraph (B): Starting Date & Ending Date

The contract automatically begins when executed by broker and buyer, unless the parties state a different date. If the contract is to begin on a specific date after signing, fill in the blank to state that date.

Practice Tip: The buyer agency contract should generally be signed by the buyer first, so it becomes binding when the licensee signs it. This allows the licensee to know exactly when the contract starts, so any issues relating to contract term can be tracked.

An ending date for the contract must be specified. This is required to meet general legal requirements for contract formation.

Note: There is no “implied” ending date or time period; a contract without an ending date may be considered to be void or unenforceable.

Practice Tip: The Ending Date provision anticipates that a specific date will be filled in. A Broker may choose to use a more general time period – for example, “3 months from Starting Date” – but this is less precise. If there is an issue as to the exact ending date, the more general provision may be subject to interpretation (e.g., When did the contract start if there were multiple negotiated changes? Is the day of signing counted as a “day” in the calculation?) Providing a specific Ending Date avoids these issues.

Practice Tip: Paragraph 2(C)(2) contains a “protection period” that protects Broker’s fee if Broker’s actions lead to the purchase of the property but the transaction occurred after the ending date of the Buyer Agency Contract (subject to certain restrictions).

Paragraph 2: BROKER’S FEE

Subparagraph (A): Fee is Negotiable

RELRA requires a statement that any fee is negotiated between the broker and the buyer, and that a fee may possibly be based on a percentage of the purchase price. Broker’s fees cannot be set or recommended by any association, multi-list, or any other organization or group, and members should avoid antitrust issues by not discussing fee structures with other brokers.

Note: The fact that a fee is negotiable between a broker and a buyer does not prevent a broker from requiring his or her salespersons to charge a specific fee. For example, it is not permissible for all brokers in a market to get together and determine that the market-rate fee will be x% for every transaction. It is permissible, however, for a single broker to set an internal policy that agents may not work as a buyer’s agent for a fee of less than x% or \$yyy.

Subparagraph (B): Calculating the Broker’s Fee

The fee is expressed as “_____ % of the sales price, or \$ _____, whichever is greater, AND \$ _____.”

This is done to allow for the maximum flexibility in presenting a fee, and it should be usable in a wide variety of circumstances. This method of expressing the fee, known as a blended fee, expresses the entirety of the Broker’s fee, even though it is laid out in multiple parts.

The fee percentage is a percentage of the sales prices. The dollar amount in the middle blank is the minimum amount the Buyer Broker would be willing to accept from that fee percentage. The flat fee is an amount that is charged in addition to or in place of the fee percentage. One or all of these three pieces can be included as part of your fee.

For example:

Description	Fee Percentage	Minimum \$ for That %	Flat Fee	Combined
% Fee Only	X%	\$ 0	\$ 0	X% of the sale price OR \$ 0, whichever is greater, AND \$ 0
% Fee, Plus Flat Fee	X%	\$ 0	\$ ZZZ	X% of the sale price OR \$ 0, whichever is greater, AND \$ ZZZ
% Fee With Minimum	X%	\$ YYYY	\$ 0	X% of the sale price OR \$ YYYY, whichever is greater, AND \$ 0
% Fee With Minimum, Plus Flat Fee	X%	\$ YYYY	\$ ZZZ	X% of the sale price OR \$ YYYY, whichever is greater, AND \$ ZZZ
Flat Fee Only	0%	\$ 0	\$ ZZZ	0% of the sale price OR \$ ZZZ, whichever is greater, AND \$ 0

Practice Tip: One good test for determining whether to use a separate form is to determine whether the fee is for “separate” activities that would otherwise not be performed. For example, if you are charging a percentage fee plus a separate “transaction fee” for work generally included in your normal brokerage activity (i.e., work that you’ll do regardless of the final fee agreed upon), you may want to use the Buyer Agency Contract to negotiate and disclose that fee as a single “blended fee.” If you are thinking of charging for tasks that you won’t perform unless you receive payment above your normal brokerage fee, then the Consumer Services Fee Addendum (Form CSF) is a better place to put it.

Practice Tip: Check with your broker and/or counsel to determine how best to fill out this fee provision. Remember that Brokers have the authority to set rules and policies on acceptable levels of compensation that can be negotiated by their salespeople. There may be financial issues if an individual salesperson negotiates a fee that is outside of the guidelines set by the broker.

The Broker may, but is not required to, charge the Buyer a portion of Broker’s Fee as a non-refundable (upfront) fee at the time this contract is signed. This upfront fee is part of the Broker’s Fee, not in addition to it.

Practice Tip: Some brokers will prefer to charge this upfront fee to cover their initial investment of time and resources when showing the buyer properties. Some brokerages may not wish to charge upfront fees in order to attract more listings; other brokerages may wish to charge these fees to reduce their risk.

Paragraph 2(B)(1) is broken down into two separate subparagraphs. The first deals with the fee owed if a property is purchased from a seller represented by a broker; the second deals with the fee owed if a property is purchased from an unrepresented seller (FSBO). Just as some listing agents have a policy of accepting variable compensation from sellers based on the identity and representation status of a buyer, some buyer brokers might choose to institute a variable fee structure based on the identity and representation status of the seller.

This contract is designed to work as both a buyer agency contract and a tenant agency contract. Paragraph 2(B)(2) allows you to fill in you're the broker's fee when working as a tenant agent.

Note: It is important to fill out *both* the fee for a purchase transaction AND the fee for a lease transaction, even if you do not think that you will be helping your client find a rental property. It is possible that they decide to rent or determine that purchasing a property is not financially possible and would look to you for assistance. The same is true when you begin by using this form to work with a client who is looking to rent. The Buyer may find that purchasing is more of an option than once thought and would want your representation in doing so. In either case, if no fee is filled in for the type of work that is carried out, there is no guarantee of payment.

Most Buyer Brokers offer to accept cooperating compensation from a listing broker as partial or complete satisfaction of any fee owed by a buyer. Note that this provision does not state that cooperating compensation will always be accepted as **full** payment of a fee, only that it will be accepted if offered. This provision also notes that where a broker is working as a buyer agent all duties are to the buyer, even though the fee may be coming from a seller.

If brokerage policy is to accept any amount of cooperating compensation (including no compensation) as full payment of any fee that might be owed by a buyer, then the broker can insert "\$0" or "zero" in the blank. If brokerage policy is to set a fee amount but allow the buyer to offset that amount with any cooperating compensation, insert the amount of the fee in the blank.

If the cooperating compensation actually received by the buyer's broker is less than whatever fee is inserted, then the terms of the provision state that the "Buyer will pay Broker the difference or include it as a term in the Agreement of Sale for the seller to pay" – i.e., the buyer will owe the difference between what is filled in here and what is received by the broker.

Example: For example purposes only, assume Broker's Fee is \$5,000. If the cooperating compensation is only \$4,000, Buyer must either pay the \$1,000 difference directly to the Broker, or convince the seller to provide funds to pay that fee. If the cooperating compensation received from the listing agent is \$5,000 or more, Buyer owes no fee under this provision.

Practice Tip: As long as it is done within the bounds of the law and the Realtor® Code of Ethics, brokers may voluntarily renegotiate cooperating compensation among themselves. PAR publishes the Cooperating Broker Compensation Agreement (Form CBC) for this purpose. It is also permissible for buyers to negotiate a "seller assist" from the seller to help pay any buyer's broker fees. The Compensation Addendum to the Agreement of Sale (Form CAS) can be used for this purpose. Carefully read the *Guidelines* for each of these documents prior to use, as the ethical issues can be rather technical.

Subparagraph (C): Balance of Broker's Fee

The balance of Broker's fee is *earned* at the time the buyer enters into a sale or lease agreement. This amount is calculated by subtracting any upfront fee from the total fee. For example, if the Broker's fee is \$3,000 and \$250 was paid at the time of signing, \$2,750 is the balance of the Broker's fee.

Note: Remember that general practice is that the balance of Broker's fee is actually paid until settlement, particularly if that fee is being paid through cooperating compensation. The

listing broker can't pay cooperating compensation until he has received his fee at settlement. As an exclusive buyer agent, the preprinted terms of the contract state that a fee is earned for **any** purchase or lease during the term of the contract, regardless of whether the broker is involved in the process.

Paragraph 3: DUAL AGENCY

RELRA requires a disclosure to the buyer if a broker could potentially be working as a dual agent. To ensure that buyers understand in advance, the disclosure is included in the Buyer Agency Contract.

Note: If the broker does not practice dual agency, use the PAR Single Agency Addendum (PAR Form SA) to change the terms of this paragraph of the Buyer Agency Contract.

Paragraph 4: DESIGNATED AGENCY

The standard language in this Buyer Agency Contract states that designated agency is applicable. The Buyer Broker designates one or more licensees to represent the interests of the buyer and that designated licensee will work exclusively for the buyer. If your Broker does not allow designated agency, check the "Designated Agency is not applicable" box.

If the buyer's licensee shows a property to the buyer that is listed by another licensee working for the same broker who is designated to represent the seller, neither licensee is a dual agent. If the same designated agent represents both the buyer and the seller in the same transaction, that licensee is a dual agent.

Paragraph 5: CONFLICT OF INTEREST

This provision informs the buyer that the broker has an ongoing obligation to inform the buyer of any conflicts of interest on the part of the broker or any of the broker's salespeople. Note that even without this contractual clause, all brokers and licensees are legally and ethically required to disclose any conflicts.

Paragraph 6: BROKER'S RELATIONSHIP WITH SELLER

This language is another disclosure required by RELRA, stating that the broker might also provide services to the seller. The fact that the seller might pay a separate fee to the broker for any services must be disclosed to the buyer.

Paragraph 7: OTHER BUYERS

With this provision the buyer agrees that the broker may work with other buyers and may show other properties to prospective buyers. RELRA states that this type of activity is not a conflict of interest.

Paragraph 8: NO OTHER CONTRACTS

This paragraph requires the buyer to avoid signing any other buyer agency contracts (even non-exclusive) with another broker during the term of this contract.

Paragraph 9: ENTIRE CONTRACT

Like the Representations paragraph in the PAR Agreement of Sale, this reminds both the broker and the buyer that all terms of the contract between the two need to be in writing and do not count if they are not.

Paragraph 10: CHANGES TO THIS CONTRACT

All changes to this contract must be reduced to writing and signed by the buyer and the broker/salesperson. This may be done in the body of the contract, if initialed by Broker and buyer, or on various addenda, including the Change to Buyer Agency Contract form (PAR Form CBA).

Paragraph 11: TRANSFER OF THIS CONTRACT

The broker may transfer the Buyer Agency Contract to another broker under certain circumstances, with written notice to the buyer. Broker must notify the buyer “immediately in writing” if a transfer is made.

Paragraph 12: CONFIDENTIALITY

This paragraph informs buyers that sellers are not obligated to treat the terms of any offer as confidential unless there is some written agreement to the contrary. This statement is included because it is required by the NAR Code of Ethics, Standard of Practice 1-13.

Note: There is no law, regulation or ethical provision requiring sellers to maintain information as confidential. Despite this fact, some buyers – and even some brokers and agents – mistakenly believed that offers were confidential and that sellers were not permitted to provide information about an offer to other buyers. This confidentiality disclosure to buyers is a required term to be sure that buyers understand the issue; it doesn't in any way give permission to a seller, it just reflects the reality of the situation. Removing this clause from the contract does nothing to change the underlying fact that a seller isn't required to treat information as confidential.

Paragraph 13: EXPERTISE OF REAL ESTATE AGENTS

Realtors[®] are experts in real estate, not law, accounting or science. If a buyer needs those services, they should get into contact with experts in those fields.

Paragraph 14: DEPOSIT MONEY

Unless another escrow agent is named in the agreement of sale, the broker agrees to retain all deposit monies received on the property in an escrow account in accordance with Pennsylvania law.

Note: If the buyer gives you a deposit and you intend to transfer it to the listing agent, notice must be given to your buyer *before the buyer signs the agreement of sale* that the money is being transferred to the listing broker. The Deposit Money Notice (PAR Form DMN) or the Buyer's Estimated Closing Costs (PAR Form BEC) can be used to fulfill this requirement.

The Broker holding the deposit monies will continue to do so until both parties agree to release them, a final court order is received, or the terms of a pre-agreement between the buyer and seller are met. PAR includes this pre-agreement in the Deposits paragraph of the Agreement of Sale.

Paragraph 15: CIVIL RIGHTS ACTS

This paragraph alerts the owner that both federal and state legislation exists to protect against discrimination. This language is adapted from the Pennsylvania Human Relations Act.

Paragraph 16: MEGAN'S LAW

This language, encouraging buyers to check the registry, is mandated by state law.

Paragraph 17: BUYER INSPECTIONS

In subparagraph (A), buyers are reminded that they have a responsibility to satisfy themselves as to whether any particular property will be adequate for their needs. Buyers are also informed that property is sold in “as-is” condition unless the parties agree in writing to make changes to the property. The paragraph contains a list of potential inspections that the buyer may elect to have once an offer is made on a property.

Note: While this list of potential inspection is long, it is not all inclusive. Buyer agents should take time to discuss with their clients what inspections might be done and how they might be handled, particularly if there are things unique to a particular market or municipality.

Subparagraph (B) is language similar to that contained in the Representations paragraph of the Agreement of Sale, reinforcing that the buyer cannot rely unquestioningly on any of the information provided in the course of the transaction, including the MLS listing, the seller disclosure form and any other statements that might be made by the seller or either agent. If buyers want to verify a particular bit of information, they are encouraged to conduct inspections.

Paragraph 18: RECOVERY FUND

This paragraph contains the disclosure required by RELRA and the Rules & Regulations of the State Real Estate Commission.

Paragraph 19: SPECIAL CLAUSES

Subparagraph (A): Addenda

The PAR Single Agency addendum (Form SA) is referenced here. When checked, this addendum becomes part of the Buyer Agency Contract. The blank lines are provided to enable you to insert titles of other addenda (including those that you may draft on your own) that are not referenced in the Buyer Agency Contract.

Subparagraph (B): Special Clauses

This blank space is for any additional clauses that are not addressed in the Buyer Agency Contract or in an addendum, and that significantly alter other clauses in the Buyer Agency Contract. If the clauses are related to an existing paragraph in the Buyer Agency Contract, number them as if they were appearing in the paragraph to which they relate. Make sure the language used is clear and unambiguous.

Example: If the clause to be added relates to dual agency, you might put: “Paragraph 3 continued: Buyer Broker may not act as a Dual Agent.”

SIGNATURE AREA

Consumer Notice

By initialing this line, the seller acknowledges having read the Consumer Notice. The form is required by RELRA.

Entire Contract

The buyer is acknowledging that the buyer has read the entire agreement and that it must be signed.

Delivery of Documents

If the buyer will be obtaining mortgage financing, he or she agrees to provide copies of the Loan Estimate and Closing Disclosure to the broker as soon as they are received. Although it may not be strictly required by law or regulation, this provision is included as a precaution to provide written permission for fax and e-mail communications to the buyer.

Acceptance

Return of the contract, and any addenda and amendments, including return by electronic transmission, bearing the signature of all parties, constitutes acceptance by the parties.

Counterparts

“This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original and which counterparts together shall constitute one and the same Agreement of the Parties.” Two contracts with identical terms can be signed on separate documents in different locations, but will still be counted as an executed contract.

Example: If three buyers must sign the contract, each can sign an identical version and do not need to each sign the same contract in sequence.

Note: Agents and brokers are strongly encouraged to retrieve a copy of the other counterpart(s) for their files to ensure the terms in each signed contract are identical.

Notice Before Signing

Once the Contract is signed, the seller and the broker are legally bound by the terms of the agreement. Encourage the seller to consult a lawyer if the seller has any questions about his or her rights and obligations under the contract.

Signing Notice

Make sure *all* the potential buyers sign and date the contract. In the blank next to “Broker,” put the name of the real estate company, as it appears on the real estate license. The salesperson or associate broker who is handling the contract should sign his or her name in the blank next to “Accepted by” and put the date in the space provided.

Distribution

Provide all parties with a copy of the signed agreement.