

Coffee and Conversation

How to Talk to sellers

Series #2



Presented By...

Chris Read

CRB, CRS, GRI, ABR, ABRM, SRS, SRES, BPOR, SFR,
AHWD, CIPS, C-RETS, C2Ex endorsed, HFR

CR REALTOR®, Designated Managing Broker/Owner
NAR Board of Directors

Mainstreet Broker/Lawyer Committee



“How We Got Here” 8/17/2023 Series #1



Presented by Lynn Madison <https://vimeo.com/856456609>

- **MOEHRL vs NAR, 20 MLSs, 4 Large Brokerages**
- **SITZER (BERNETT) vs NAR, Missouri MLSs, 4 Large Brokerages**
- **Department of Justice (DOJ) vs NAR**
- NOSALEK vs MLS PIN, Large Brokerages
- REX vs NAR and Zillow
- PLS vs NAR, various MLSs

Large Brokerages:
Anywhere, Keller Williams,
RE/MAX, Home Services

Participation Rule and Clear Cooperation Policy

The Main Issues of the Largest Bombshell Lawsuits: Moehrl and Sitzer



Participation Rule:
Requirement to put
offer of Buyer
Brokerage
Compensation in MLS

Buyer Agent Value
is Minimal
if needed at all

**Series #3 October 19 “How to talk to Buyers”
Coffee and Conversation 9:00 – 10:00**

What COULD happen?

Blame the MLS for the whole mess –
disband them completely

Forbid any offer of compensation in the MLS

Forbid mandatory offer in MLS

We win – everything still needs to change

NAR and Legal Team Experts

- Defending and Leading the Way
- Appeals, Briefs,
- competition.realtor

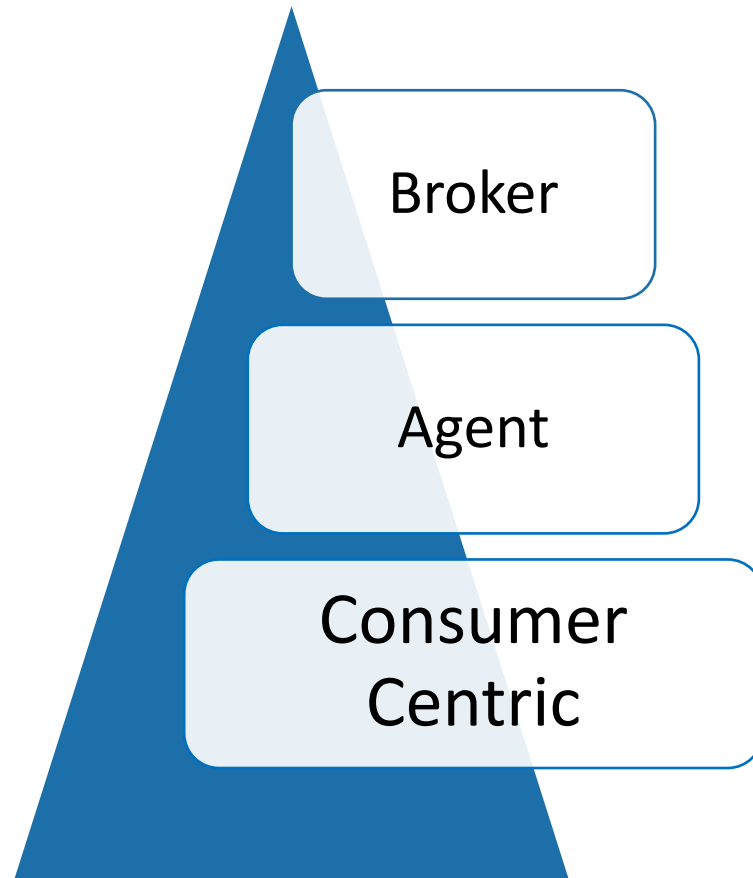


Let's Talk about What WE Can Control!

- How can WE Get Better on our own without being mandated, bullied, or forced?
- Focus on the Opportunities!
- Be Proactive
- Have Courage to Lead Change



Who is the Driving Force today?



We NEED to listen to the Messages and Questions being thrown out there!

- WHY are the Sellers having to pay the Buyer Brokerage Fee?
- Sellers don't get to negotiate that fee
- **AND...Buyer Brokers' Value is minimal... if needed at all!**

PARADIGM SHIFTS

Fundamental changes in approach that causes old ways of thinking and doing things to become irrelevant

Historical Examples:

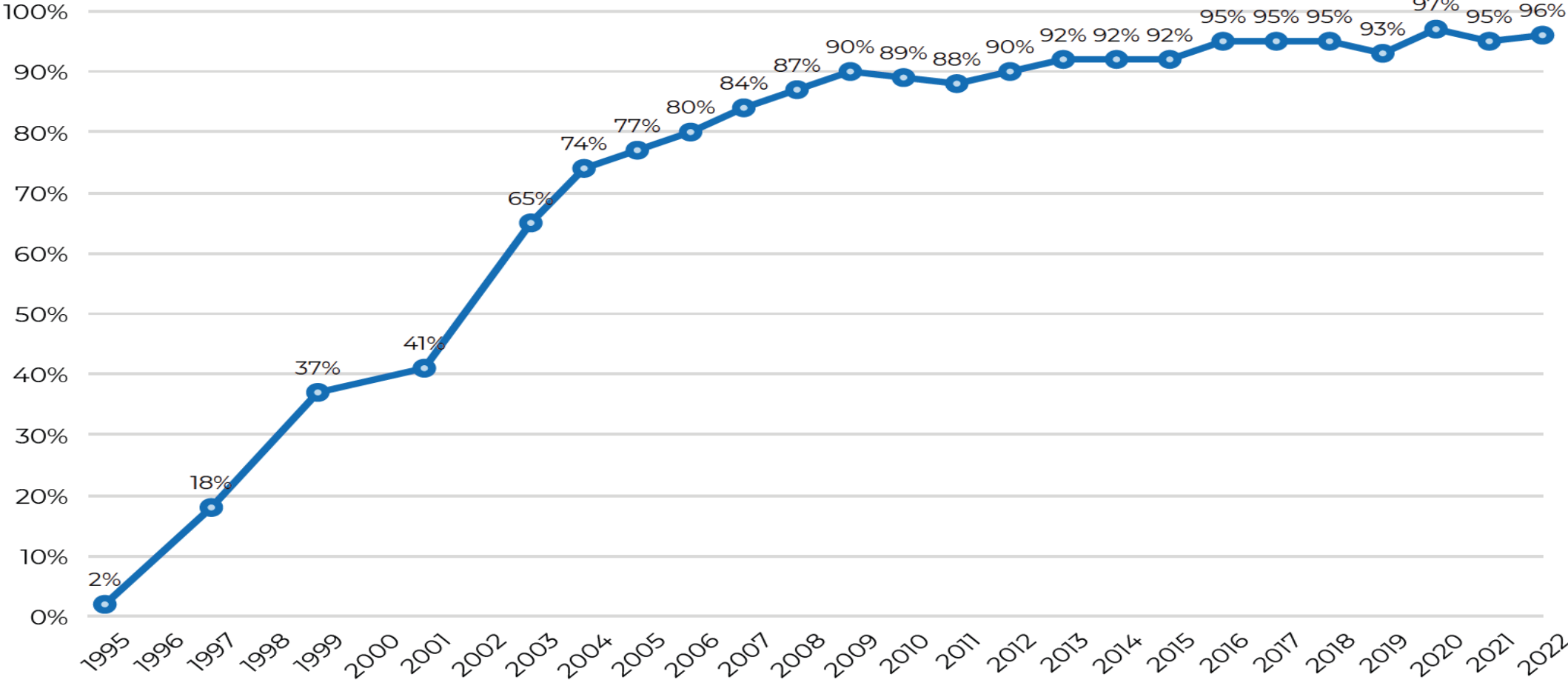
- Interest Rates > 10% and ARMs
- Books to the Internet
- Sub Agency to Agency
- Salesperson to Broker
- Pandemic
- Rising Interest Rates



Future Examples: AI

Exhibit 3-11 Buyer Use of Internet in Home Search Process, 1995–2022

(Percentage Distribution)



1993 NAR President William Chee: “The Lion is coming over the hill!”

Need NEW Seller Conversations:

STOP Saying...

“The commission we charge is X and we pay out Y to the co-op brokers”

Sellers' Perception: Dictating without any input and/or negotiations



Engage versus Dictate...



Lack of transparency leads to Lack of trust

Decoupling the Buyer Agent compensation from the Listing Brokerage compensation:

“Sellers, my fee for marketing services is X. Now Let’s talk about the compensation for the Brokerage that brings a buyer to you.”



- Compensation is two parts added together to make the whole.
- Part is for the listing office and what they do for the seller.
- Part is for the “Other” brokerage and what they do for the buyer
- Total is paid by both the buyer and seller in the price they agreed on

160 **15. Compensation:** Except as provided hereafter, in consideration of the obligations of the Brokerage, the Seller agrees to
161 pay Brokerage, at the time of closing of the sale of the property, or the initial closing of an installment contract for deed,
162 and from the disbursement of the proceeds of said sale, compensation:

- 163 1. For Listing Brokerage services _____ % of the sales price or \$ _____. If applicable, additional compensation
164 for Listing Brokerage shall be: \$ _____;
- 165 2. For the brokerage that effects the execution of a valid binding contract with a buyer ready, willing, and able to purchase
166 → the Property (hereinafter referred to as “Other Brokerage”): _____ % of the sale price or \$ _____ (Other
167 Brokerage may be the listing brokerage when Listing Brokerage is the only brokerage involved in the transaction);
- 168 3. For a total compensation of _____ % of sale price and/or \$ _____ (subject to possible adjustments – see lines
169 172-190).

The Other Brokerage

Could Be:

- Co-op Broker
- Broker from Listing Brokerage
- Dual Agent
- Unrepresented Buyer



Cooperation and Compensation

- *Our MLS system for years has provided the largest database of available homes*
- *Broker cooperation sets the U.S. real estate industry apart from the rest of the world.*
- *The MLS facilitates cooperation between buyer and seller brokerages which provides the largest pool of buyers possible for your home*
- *Some believe the buyers should pay the compensation for the buyer's agent directly*

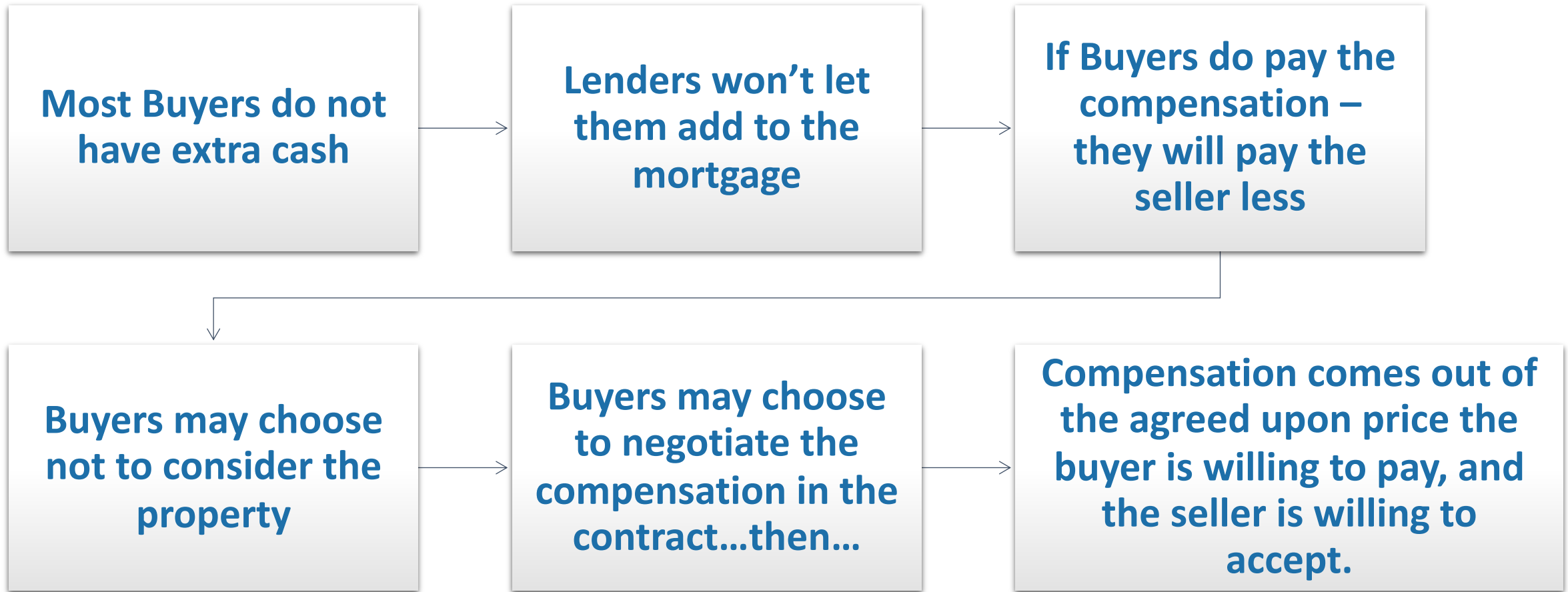


These MLSs Have Removed the Requirement of Offering Buyer Brokerage Compensation



- Northwest MLS - Seattle Area – 30,000 (Broker Owned) since 2019
- PIN MLS – Massachusetts Area – 8,000 (Broker Owned) 6/30/23
- **Bright MLS – Mid-Atlantic Area – 95,000 (Under NAR E&O) 8/9/23**
- MRED – Private Listings only – 47,000 (Hybrid Ownership) 6/1/23

Little or No Offer of Compensation?



No offer of compensation: Unintended Consequences?

- Greatest impact would be on First-time Buyers, Vets, and low to middle income buyers.
- Added Complexity to contract negotiations
- Buyers trying to navigate home purchases without representation



Why Sellers would care if Buyers are unrepresented:

- **Represented buyers have access to more properties via the MLS**
- **Better chance for prospective Buyers to:**
 - **Be motivated versus curious**
 - **Be preapproved, educated on the process, have access to customary forms used in your market area**
- **A licensed Professional makes the appointment and responsible for those they take through your home**
- **Third party to oversee negotiations with better chance to curtail emotions**
- **Licensees are regulated by license law & rules designed to protect Buyers and Sellers versus “the wild west”**
- **REALTORS® are committed/obligated to the REALTOR® Code of Ethics**
- **Safety Factors**

Addressing Buyer Agent Value Perception



Re the perception that Buyer Agents have minimal value:

- Listing Agents: Are you part of the solution or part of the problem?
- Adversarial relations and conversations between agents adds negative energy
- Conveying negative comments about a co-op broker to sellers is putting fuel on a fire of mistrust

“It is through cooperation, rather than conflict, that your greatest successes will be derived.” Ralph Charell

If Seller asks: Do you think we should offer compensation?

- *“Home buyers have a better shot at affording a home and professional representation when the buyer broker’s compensation is part of the transaction.”*
- *“Most buyers want to include the buyer compensation in the offer they make to the seller.”*



Seller asks: “How much compensation do you think we should offer?”

What NOT TO SAY...

- *You have to pay at least X if you want your home to be shown*
- *If you offer a “Lower than normal fee” buyer agents will steer their clients away from your home.*
- *The standard (or normal) commission rate in our area is...*



*“Let’s look at what your competition is offering
the buyer brokerage.
How would you like to position yourself? “*

“Top Agents are asking for and executing Buyer Agency Agreements that commit buyers to a minimum compensation for their agent’s services”

“When I work with buyers, I request X%”



Company Policy Examples that Impact the Compensation

The following are NOT required or suggested...

They are ALL individual brokerage options and decisions.

The only requirement is transparency and disclosure to the seller client of any such policies that would affect the compensation payable by the seller.

Transparency requires more
Conversations regarding
Compensation:

- Variable Rates
 - Dual Agency
 - Unrepresented Buyer
- Minus Fee
- Additional Compensation
- Cancellation Policy
- Net versus Gross



- 170 4. The Illinois Real Estate License Act and the NAR Code of Ethics require disclosure to the client of any additional
171 policies relating to compensation including, but not limited to:
- 172 a. Brokerage's compensation policies may affect the distribution of compensation. If the Listing Brokerage charges
173 a fee of \$ _____, it will be added to the Brokerage's compensation and reduced from the Other Brokerage
174 compensation, but will not affect the total compensation payable by Seller.
- 175 b. Total compensation may be affected by and as a result could increase or decrease due to Brokerage's policies such as:
- 176 i. Variable rate, if applicable, described as follows: _____
177 _____
- 178 ii. Alternative compensation structure, if any, for Non-Participant(s) (referenced in Paragraph 16 below):
179 _____
180 _____
- 181 iii. Brokerage, on a case-by-case basis with permission of the Seller, may agree to different compensation to
182 brokerages who are Participants as defined in Paragraph 2 above.
- 183 iv. Total compensation will be paid on [CHECK ONE] Definite Dollar Amount; Gross Sale Price; or
184 Net Sale Price. As provided in MRED's Rules and Regulations, compensation paid on net sale price is
185 defined as "*A percentage of the net sale price in the initial contract, reduced thereafter only by an agreed*
186 *reduction in the amount to be paid by the buyer due to a subsequent appraisal. The net sale price is*
187 *defined as the gross sale price minus amounts to be credited or paid to the buyer, as reflected in the*
188 *initial sales contract.*"
- 189 v. Other Compensation Information, if applicable: _____
190 _____

DOJ versus NAR (Department of Justice)



Lawsuit 2020 ; Settlement Nov 2020 negotiated
DOJ to cease investigations and NAR to agree to:

1. **Buyer Brokerage compensation must be made publicly available**
2. Provide consumers with all properties regardless of compensation
3. Buyer agent cannot represent their services as free
4. **Cannot limit lockbox access to only MLS members**

Other Seller Conversations Needed:



- Non-member showings
 - Verify License
 - Compensation?
 - Voluntary Arbitration
 - DMB signed agreement
- Allow pictures/videos by agents or buyers?
- Love Letters



**MAINSTREET ORGANIZATION OF REALTORS®
BROKERAGE TO BROKERAGE COOPERATING COMPENSATION AGREEMENT**



33 7. Any controversy or claim arising out of or relating to the rights granted to the parties to this Cooperating
 34 Compensation Agreement shall be settled by mediation or arbitration according to the rules then in effect of the
 35 National Association of REALTORS®, whether or not the parties are members of any REALTOR® Organization.

36 Acknowledged and agreed this [] day of [], 20 []:

37 **LISTING BROKERAGE:**

COOPERATING BROKERAGE:

38 []

[]

39 Designated Managing Broker Authorized Signature [REQUIRED]

Designated Managing Broker Authorized Signature [REQUIRED]

What Can I Do?

- Each of us has a role to play in educating people about how local MLS broker marketplaces provide market-driven pricing and opportunity for consumers and level the business playing field. Each of us have important stories to tell about the value of REALTORS®. Every chance you get – in conversations, on your website, in the community – share that. And share materials from competition.realtor far and wide.
- Also, in addition to the longstanding practice of having listing agreements, every real estate agent can and should use buyer broker agreements. Also continue to remind yourself of your obligations under the NAR Code of Ethics to advise your clients and make all agreements in writing and clear and understandable.

Series #3 “How to Talk to Buyers” October 19

Change is difficult

Most people focus on the Problems
Instead of the Opportunities

Get out in front of it
Or
Get Run Over!

To your...Success on Purpose!



Series #3
October 19th
“How to talk to Buyers”

