



TO HELP U MOVE
MITCH
ROLSKY

helping you make the right move

Agent Commissions, Office Policies, & More

10 Common Questions & The Answers

Learn about... how real estate commissions are set, the only two things that are changing because of the recent settlement of the class action lawsuit against the National Association of REALTORS, and get a better understanding about Limited Agency and home warranties.

Are broker's compensation fees set by lawmakers, by the National Association of REALTORS® ("NAR"), by local or regional Multiple Listing Services ("MLS") or are fees set by these similar entities in the greater Indy area that are called the Broker's Listing Cooperative ("BLC")?

Broker's compensation and fees for services are not now, nor have they ever been, set by law nor by any of these entities. Fees are fully negotiable within the guidelines of any brokerage policies.

A broker's compensation for services rendered to a seller or for services rendered to a buyer is solely a matter of negotiation between the broker and their client, and is not fixed, controlled, recommended, or maintained by any persons not a party to the brokerage service agreement.

Additionally, the compensation paid by a listing broker to a cooperating Buyer(s) Agent broker in respect to any listing is established by the listing broker and is not fixed, controlled, recommended, or maintained by any persons other than the listing broker and those sellers and buyers who see the value in working with these brokerages.

Are real estate Agent Commissions the same, or do the fees vary between agents?

Just like many other professionals including, lawyers, accountants, financial advisors etc., you will find although fee structures could be similar, that each firm, and professionals within each firm, set their fee structure in large part based on the demand, capabilities, and levels of expertise the firm or agent can provide to their clients. So, because of these differences, and because agents may also offer different levels of skills and services, the Commission each broker or agent charges can and does vary!

Marketing fees for listing agents and negotiation fees for all agents can and do also vary based on the selling price of the property, by regions, states, brokerages, and even sometimes by agents within brokerages based on the different level of services the agent provides, and/or also based on that agent's individual fee structure with their brokerage.

Plus, historically listing agents have also shared a portion of the total commission with the Buyer's Agents. It's anticipated that just like it's always been, brokerages and/or agents going forward will continue to have different policies regarding listing properties where the Seller(s) elect to not pay any cooperating BAC at all or pay varying amounts of BAC. This is just one more reason why commission amounts have and most likely will always continue to vary between brokerages and agents.



I heard about changes due to a class action lawsuit about Sellers paying Buyer Agent commissions! Are real estate commissions decreasing, will home prices decrease, will sellers no longer pay for Buyer Agent commissions? What are all of the Changes?

Contrary to a lot of misleading and inaccurate reporting in the media, and also by many politicians, we don't expect to see any real change in property prices, nor in total commissions being paid! There are only two changes being made related to the settlement of this litigation.

- 1) The National Association of REALTORS®, along with many states including Indiana, effective July 1, 2024, now require that before agents can show buyers any property, the potential buyer must already be under contract with the agent who is showing the buyers a property. This contract must include the agent's responsibilities, a predictable and fixed amount of compensation that the agent will receive for representing this buyer in the purchase of a property. This amount of compensation can't change without a signed amendment. The only time a buyer can be shown a property, and not already be under contract with the showing agent, is when the agent is representing ONLY the sellers, like during an open house.
- 2) While Seller's can, and likely will, still offer to pay Buyer's Agent Compensation for an agent that's 100% representing ONLY the buyer's interest, this amount will not be visually apparent as part of the MLS known locally as the BLC. Additionally, any offers of this compensation by Sellers can NOT be made using any MLS related service like through the showing service that's connected to the MLS/BLC. So, effective July 1, 2024, the Buyer's Agent will need to determine what amount, if any BAC, the seller has included as part of the List Price so that the Buyer(s) can then determine if they even want to look at the property, or alternatively consider the property with the intent to ask the Seller(s) to pay the BAC as part of any offer.

To address this change as a Listing Agent, ToHelpUmove will include a "BAC QR code" that will be shown on every sign, and on all marketing literature, that directs & connects users to www.ListingsBAC.com where Buyer's agents can see the BAC that's included in the list price.

Will Seller(s) Continue To Offer To Pay a Buyer's Agent Commission ("BAC")?

While It's always been up to individual brokerages and agents to advise Sellers on the benefits to the Seller in paying BAC, the amount of BAC paid has always varied. Additionally, Sellers could always select an alternative brokerage or agent if the Seller(s) is unwilling to pay a BAC amount that was consistent with the brokerage's BAC policy. Smart sellers though have always hired listing agents who market their property to both the buyers and also to the agents of these buyers! While everyone understands marketing to buyers, buyer agents who love a home for any number of reasons, keep the home top of mind, and tend to show it to more of their buyers.

So, while Sellers have never been obligated to offer any Buyer's Agent Compensation, sellers should understand that not offering any compensation, or offering a "lower than typical BAC" can reduce your pool of potential buyers and buyer agents. Ultimately, the more potential buyers there are for a property means a greater likelihood for multiple offers that can yield the best results for the sellers.

This is true regardless of if it's a Seller's, Balanced, or Buyer's market since many buyers, including first time buyers and FHA buyers, may not have enough funds available to pay their down payment, the closing costs and to also pay their buyer's agent fees. And it's both possible and typical to have all three types of markets at the same specific point in time. What the type of market is for the property you want to sell could depend only on the part of town, the specific neighborhood, the location within the neighborhood, the style, condition, price point, or many other factors. And, if you are selling in a Buyer's Market, regardless of the reason, where there is greater supply than there is demand, not paying any BAC or paying lower than typical BAC can mean you could literally receive no showings or offers! In fact, during Buyer's markets, good listing agents will often make the case to instead pay a higher than typical BAC just to attract the attention of more Buyer agents.

Additionally, being unwilling to compensate the Buyer's agent, on behalf of the buyers, means some buyers may choose to save money by representing themselves. The lack of an experienced agent advising the buyer means buyers will likely be less informed on comparable sales, and regarding the proper value of the property they are considering. This can also lead to more unrealistic and unreasonable offer amounts and/or terms and conditions within an offer. These negative implications can especially be a problem when it's time to address unrealistic inspection requests that could mean having to put the property back on the market. This is the worst-case scenario, since potential new buyers can and will presume that the property has many defects, and/or the sellers are unreasonable and unwilling to address defects, rather than understanding that a deal died because of an unaware or uninformed buyer with unrealistic expectations.

Conversely, offering a buyer's agent commission can incentivize better more experienced buyer's agents to bring their buyers to see and write an offer on your home. Plus, if your buyer's agent commission is greater than the BAC being offered on the homes of competing sellers, then if and when buyers ask their agents for advice on which house to buy, and the agents feel your home and the other top choices are all but equal, then your greater BAC could prompt the Buyer's agent to encourage their buyer to write on your property vs the competition.

If I List with Mitch, and ToHelpUmove, can I pay Mitch his typical Listing commission and still pay a lesser amount in the Buyer's Agent Commission?

As a brokerage, it is our policy to cooperate with all licensed buyer agents, and to work with Sellers who see the value in offering to pay a fair and reasonable Buyer's Agent Compensation because we know that:

- A) Most buyers are more comfortable having an agent representing their interests, and without the seller offering to pay for that representation, there could be times when a Buyer eliminates your property from consideration only because there was not a Buyer's Agent involved to remind the buyer why your property is a better value and/or is a better investment! There could also be more instances of "buyer's remorse," or times when buyers make atypical and unrealistic requests, that without a Buyer's Agent in the mix to educate the Buyer, could mean that a viable sale ends up needlessly dying.
- B) Some otherwise great buyers who might fall in love with your property and be the perfect buyer that's easy to work with, might choose to not even see your place because absent your offer of a reasonable and fair Buyer's Agent Commission, the buyers may not have enough funds available to cover their downpayment, the closing costs and all or even just part of the Buyer's Agent Commission. So, rather than possibly wasting time, they just move on!
- C) Historically purchase prices of most comparable sales, used to set your likely sales price, have also included some amount of Buyer's Agent Commission. So, unless Sellers reduce the list price, by the typical BAC used in the comparable sales, these sellers are effectively asking a buyer to pay the BAC directly to their agent AND to also pay the BAC via the list price.

For these reasons, while the amount of the listing brokerage fees shall be in accordance with ToHelpUMove office policy regarding commission structure, ToHelpUMove will only work with Sellers who see the value in offering to pay a BAC, as part of closing, that is at least equal to the Listing Agent Commission fees for all members of Metropolitan Board of REALTORS® (MIBOR.) Additionally, based on varying market conditions, the level of motivation of the sellers, and based on other factors, there could be times where the Seller is advised and encouraged to pay a buyer's agent commission that is even greater than the listing agent commission.

What is Limited/Dual Agency and why is every Buyer and Seller required to sign a disclosure related to Limited/Dual Agency?

Dual or Limited Agency most typically happens when the same single real estate agent tries to represent both the Sellers and the Buyers in the same transaction. A less frequent type of Limited agency can happen when an agent within a brokerage is in a transaction with their supervising agent, who conceptually can also see the confidential paperwork associated with all sides of the transaction. This often happens with an agent that's part of a Team, where the Team Leader is the other agent in the transaction. This could also happen, although even less frequently, if an agent within a brokerage is in a transaction where the other agent is the Principle/Managing Broker for the firm. Again, this can create conflicts since the Managing Broker supervises all agents and can see confidential paperwork associated with all transactions.

While many states have made Limited/Dual agency illegal, Indiana still allows this practice. Because of this Buyers and Sellers are required by Indiana Law, at the time a real estate agent starts to represent the client, to sign the Firm's Office Policy on when Limited Agency is allowed. Additionally, Indiana law requires a second written notification to both Buyers & Sellers at the point any party is about to enter into a limited agency transaction. This second disclosure form must be executed by all parties BEFORE any offer is prepared and/or presented to either party of the transaction! Lastly, buyers and sellers will sign several documents where limited or dual agency is discussed or disclosed including a "check box" on every Metropolitan Board of REALTORS® Purchase Agreement. While the Office Policy disclosure that you will be asked to sign must by law describe when, and if, the firm allows Limited agency, these disclosures rarely explain the negatives consequences associated with being party to a limited Agency transaction.

Is Limited/Dual Agency, where One agent is representing both the buyer and the seller at the same time on the same property, ever encouraged by Mitch?

The first indicator that Limited/Dual Agents are bad for you, regardless of if you are the buyer or seller is that real estate agents including REALTORS® typically refer to these transactions as "Me & Me" deals!

While all of these disclosures are intended to educate buyers and sellers, these documents are also an effort to eliminate lawsuits by being able to state that the parties understood they were part of a Limited Agency transaction. In fact, one of the most common reasons for lawsuits related to the sale or purchase of real estate, is that one party feels that the Limited/Dual Agent inappropriately advocated or represented on behalf of the other party's interests.

Frankly, the conflicts of Interest that can happen with Limited or Dual Agency are numerous. For sellers their goal is to obtain the best price with the most favorable terms that limit a buyer's ability to change their mind. However, the Buyer's goals are typically to get the lowest price with the greatest flexibility to change their mind! If the agent truly acts as a Limited agent, without advocating or representing for either party, then the only person who truly "wins" in this scenario is the real estate agent who receives a higher commission for representing both sides of the transaction, while doing much less work since they are not fully representing either the buyers or the sellers. Since both the listing agent commission and buyer agent commission are typically built into the purchase price, and while the Sellers often historically paid the buyer's Agent's fees as part of closing, this means the SELLERS are paying comparable fees, as they typically would, but the Sellers are getting very little of the representation they should and would usually receive! This is also true for the buyers, because while the comparable sales, used to determine the purchase price that the buyer pays, typically included buyer agent fees, the buyers did not get all of the same representation that buyers should and would usually receive!

Note: Mitch will not ever act as a limited or dual agent where there is only one agent representing two clients except where Mitch is listing and selling his own personal real estate! Mitch is one of a very few agents, within the greater Indy area, that will make this commitment about not subjecting Buyers & Sellers to most Limited Agency sales.

What is a home warranty?

A home warranty is a service contract that typically covers the first year or two of owning a place, although the ability usually exists to continually renew the home warranty for as long as you own the property. The warranty is intended to address the cost of repair or replacement of covered items, such as major kitchen appliances, as well as electrical, plumbing, heating and air conditioning systems. A home warranty doesn't cover windows, doors, floors or other structural features. In addition to the annual cost of the home warranty, there is a deductible often called a service/trip fee of typically \$100.00 per every individual claim. So, if your dishwasher breaks and your water heater also needs to be repaired or replaced, even if your report both items at the same time, there will be two \$100.00 service fees. Most plans have a basic plan that provides all homeowners who purchase a policy with certain coverages. Homeowners can also purchase one or more optional components that provide additional coverage at an additional cost. Some of these optional coverages may also be prudent expenses based on the age, and the condition of the appliances and mechanicals etc., and other factors.

Why would I want to have a home warranty as a Seller or a Buyer?

There are several reasons why a home warranty may make sense for buyers and at least one reason that makes sense for both buyers and sellers. Like all warranties, a home warranty is first intended to protect against expensive, unforeseen repair bills and to also provide peace of mind. For a homeowner who doesn't have an emergency fund or wants to reserve those dollars for other things, a home warranty can act as a buffer.

Buyers should keep in mind that most sellers know that a move is likely in the next six to twelve months before they actually list the property for sale. This means that most sellers will also try to defer maintenance because they know they are likely to move. By this we mean that if the seller thought they would be in the property long term, they would typically be more inclined to replace an appliance or mechanical system, versus take the less expensive and less permanent repair route that's not likely to be a long-term solution. This also explains why most home warranty firms don't make money in the first year of coverage. They Home Warranty firms hope to make their money via renewals of the home warranty over the subsequent years.

It's important also to understand that home warranties typically won't cover pre-existing conditions. For example, if a dishwasher clearly has not worked for some time, then the warranty will not likely cover the repair or the replacement. Conversely, a dishwasher that worked without any issue during an initial inspection, and then broke before or after closing would likely be repaired or replaced.



Home warranties also make sense for people who aren't handy. And, since home warranties eliminate the need to find a contractor when something breaks, a home warranty is also great for those who just don't want to worry about tracking down a contractor when they have a problem. However, employing a home warranty firm also usually eliminates the owner's freedom to choose your own expert or independent contractor. Additionally, the home warranty firm, not the homeowner, will 100% make the decision regarding any repairs vs replacements. It's safe to presume that if the home warranty firm believes a repair can be made, and the cost to repair will cost less than the replacement, that a repair vs a replacement will occur! Also, the homeowner may have little or no say in the model or brand of a replacement component, though the warranty contracts typically provide for an item of similar or equivalent quality.

Lastly home warranties can help both the buyer(s) and Seller(s) in a couple of ways. First home warranties are viewed favorably by most buyers. So, by including the home warranty, the seller(s) are adding a benefit that may make their home feel like a better option to potential buyers who are comparing the property to other properties that do not include any home warranty. Additionally, and more importantly, the home warranties can keep the sale alive and moving towards closing. The home warranty that Mitch recommends includes free seller's coverage during the time the property is listed for sale. This means the Seller(s) can pay the \$100 service fee and use the warranty should anything break during this time. The warranty can even be used to address the repairs the seller may have recently made, vs spending the dollars for replacement, when that short term fix didn't last through the closing of the sale, and the warranty can be used to cover many new and unforeseen issues. Mitch shares a true story of a seller reaching out to say that the sale would not be happening because the air conditioning in the property went out and the seller, forgetting that there was a home warranty in place, was unwilling at the agreed upon sales price to spend three thousand dollars on a new air conditioner. Ultimately the A/C was replaced via the \$100 service fee and the sale closed on time. Another win-win that can happen for both buyers and sellers is that the home warranty can often be used to address repairs that may be needed as part of a buyer's inspection response.

Why do I need to sign an acknowledgment regarding a home warranty?

One of the more common reasons for litigation related to the sale of real estate is the allegation that a real estate agent failed to make the buyer or seller aware of the ability to purchase a home warranty that could have potentially reduced or eliminated subsequent repair expenses. So, having all parties to the real estate sale acknowledge the existence and/or possibilities of a home warranty, forces a discussion on this topic.

Ultimately, this is just another example of Mitch's commitment to tell clients what they need to know, so that they can make the best and most informed decisions!



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