

## **The Difference Between “Compensation” and a “Concession”**

**and**

## **How to Document It using NABOR® Contract Forms**

The National Association of Realtors® (NAR) Settlement created some changes to our real estate business practices to preserve consumer choices regarding real estate services and provide greater transparency relating to broker compensation for those services. Different terminology and a multitude of new forms have understandably created confusion among real estate Sales Associates. For example, “commission” is now called “compensation” and a “credit” is now called a “concession”.

Lets break those two terms down a little further.

“**Compensation**” refers to payment made to a real estate broker for services rendered, typically as a commission. The key points of “compensation” include:

- **Compensation paid to a real estate broker is not set by law and is fully negotiable**
- It is negotiated between the **customer and the broker**
- It must **NOT** be advertised on the MLS (Multiple Listing Service)
- A Buyer Broker working with a Buyer must sign a written buyer’s agreement clearly stating the compensation paid to the Buyer Broker before the touring of a home.
- A Seller can still offer to pay compensation to a Buyer’s Broker, but it must be negotiated **outside of the MLS**.
- It is only part of the NABOR® sales contract between Buyer and Seller if the NABOR® “Addendum to Sales Contract – Compensation” is used

A “**concession**” refers to a benefit or cost reduction that a Seller may offer to the Buyer to help motivate a Buyer to purchase the Seller’s property. A concession is normally a monetary credit paid by a Seller to a Buyer at closing. The key points of a “concession” are:

- A concession is part of the overall negotiation between **Buyer and Seller** and is **always** part of the sales contract
- A Seller can offer a concession (credit) to the Buyer for no specific purpose, such as “Seller agrees to provide a credit to Buyer at closing of \$5,000,” or
- A Seller can offer a concession (credit) to the Buyer for a specific purpose (such as toward closing costs, the Buyer’s Broker’s compensation, or another identified purpose).

If a Seller chooses to offer compensation to a Buyer's Broker, or a concession to a Buyer, the NABOR® Legal Resource Committee has created many contract forms to assist Sales Associates with properly documenting any offer a Seller chooses to make to a Buyer or Buyer's Broker. However, before using any of these contract forms, it's important for Sales Associates to contact their Broker to discuss, fully understand and comply with their respective company's business practices and policies.

That being said, the following is general information provided to help explain possible uses of the compensation and concession contract forms:

- If the Seller has executed a NABOR® listing contract and elects to authorize the **Listing Broker** to offer compensation to a Buyer's Broker, then a Sales Associate could use the form titled "**Broker Compensation Agreement (Listing Broker to Buyer's Broker)**" to document the offer of compensation. This is a separate agreement between the Listing Broker and Buyer Broker since compensation is prohibited from being offered in MLS.
- If the Seller has executed a NABOR® listing contract and the Seller has elected to offer compensation directly to the Buyer's Broker, then a Sales Associate could use the form titled "**Broker Compensation Agreement (Seller to Buyer's Broker)**" to document the Seller's offer of compensation to the Buyer's Broker. This is a separate contract between the Seller and Buyer's Broker since compensation is prohibited from being offered in MLS.
- If the Seller has elected to offer Broker Compensation, either the Broker Compensation Agreement (Listing Broker to Buyer's Broker) or the Broker Compensation Agreement (Seller to Buyer's Broker), whichever is consistent with the listing contract signed by Seller) should be fully executed before an offer is presented by a Buyer Broker or an offer is accepted by a Seller; **OR**, the applicable NABOR® "Addendum to Sales Contract – Compensation" should be part of the sales contract.
- Alternatively, to negotiate a "**concession**" into the Sales Contract between Buyer and Seller, the NABOR® "Addendum to Sales Contract – Concessions" could be used to contractually obligate the Seller to provide a credit to Buyer at closing towards closing costs, Buyer Broker Compensation or another specified purpose. The Sales Associate could complete the Addendum to Sales Contract - Concessions form to indicate whether the "concession" (credit) to the Buyer is a flat fee or a percentage of the purchase price of the property, or another item of value or benefit.

**HERE IS A SUMMARY OF COMPENSATION VS. CONCESSION IN A CHART FORMAT AS A REFERENCE TOOL\***

	<b>Compensation</b>	<b>Concession</b>
<b>Who receives it?</b>	Real Estate Broker	Buyer
<b>Purpose?</b>	Payment for Broker Services	Benefit or cost reduction (normally monetary credit)
<b>If offered, who is the agreement between?*</b>	Listing Broker & Buyer's Broker OR Seller & Buyer's Broker	Seller and Buyer (in sales contract)
<b>Is it a separate agreement or part of the sales contract?*</b>	Usually a separate agreement, but may be part of the sales contact	Always part of sales contract
<b>Is it allowed in SWFL MLS?*</b> <i>(as of April 21, 2025)</i>	<b>ABSOLUTELY NOT</b>  \$1,000 fine for first offense without warning	Only in confidential remarks & may not be confused with or tied to a commission to a Buyer Broker
<b>Which NABOR® contract forms can be used to document it? *</b>	Broker Compensation Agreement (Listing Broker to Buyer's Broker)  Broker Compensation Agreement (Seller to Buyer's Broker)  Addendum to Sales Contract - Compensation	Addendum to Sales Contract - Concessions

Sales Associates need to be very careful when documenting broker compensation agreements and concessions to avoid two possible pitfalls. First, Sales Associates should use the forms created by NABOR® instead of writing language about compensation to a broker in "Other Terms and Conditions" of a sales contract to avoid costly mistakes (such as not getting paid) and potentially engaging in the unlicensed practice of law. Second,

Sales Associates must use care and diligence when documenting compensation or a concession to avoid obligating a Seller to pay more to a Buyer Broker or Buyer than a Seller may have initially offered. For example, if a Seller has executed a NABOR® listing contract and elected to authorize the Listing Broker to offer compensation to a Buyer's Broker, then that offer of compensation should be documented with NABOR®'s Broker Compensation Agreement (Listing Broker to Buyer's Broker) and not with any other additional form creating an obligation for the Seller to directly pay the Buyer's Broker. Using a second form for direct payment from Seller to a Buyer Broker or a concession could "double dip" and obligate the Seller to pay twice the amount intended (unless the Seller subsequently agreed to pay more).

Aside from continued training on the use of these newly created NABOR® contract forms, it is important to remember that under Article 3 of NAR's Code of Ethics the obligation for Realtors® to cooperate with each other does not include the obligation to share compensation. It's the Seller that will continue to have the right to choose whether to offer compensation to a Buyer Broker and/or offer a concession to a Buyer.

We are proud to be working among Sales Associates who are mindful and respectful that brokerages may have different business practices and company policies, but that does not mean that we cannot continue to successfully negotiate sales transactions together for the benefit of our respective customers.

We thank you for your professionalism and look forward to another successful year in sales using NABOR®'s contract forms.

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***\*Legal Disclaimer: This article was written for general educational purposes as of April, 2025 and should not be construed as legal advice. Sales Associates should consult their Broker as to his or her recommended business practices and company policy and/or should contact a Florida attorney to discuss any legal questions regarding a specific transaction or set of factual circumstances.***