PROCEDURE & POLICY

Policy Name:	**NAR & WRA Settlement Procedural Changes - 2024**					
Policy #:	**2024-002**	**Section Title:**	**Transactions**		**Formerly Book:**	**NA**
Approval Authority:	Gscheidmeier, John		**Adopted:**	August 12th, 2024	**Reviewed:**	
Responsible Executive:	Broker/Owner		**Revised:**	NA		
Responsible Office:	Waukesha/Main		**Contact:**	Operations Manager		

1. **Policy Statement**. RE/MAX Service First ("RSF"), and Real Estate Organizations, LLC., ("the Firm"), is adopting the following policy and procedures revisions to comply with the changes & restrictions as part of the National Association Of Realtors ("NAR") settlement.

2. **Reason for Policy.** To fully comply with national and state policy changes as a result of the NAR lawsuit settlement. RSF, nor RE/MAX admits any wrongdoing as a result of this settlement.

3. **Definitions and Organization Abbreviations**. The following abbreviations refer to the following organizations.

    a. RE/MAX Service First & RE/MAX Service First – Lake Country ("RSF")
    b. Wisconsin Realtor's Association ("WRA")
    c. National Association Of Realtors ("NAR")
    d. Greater Milwaukee Association Of Realtors ("GMAR")
    e. MetroMLS of Milwaukee ("MLS")

4. **Who Should Read this Policy.** This policy should be read & thoroughly reviewed by all personnel and independent contractors. In particular, the following should regularly review this policy: Client Services Coordinator(s), Office Manager(s); Lead Manager(s); Lead Generation Platform Coordinator(s); Real Estate Agents/Independent Contractors; Team leaders.

5. **Resources.** Revised forms as indicated herein.

6. **Disclaimer and Disclosures.** The Firm recognizes that the NAR settlement is a fluid and developing situation that could change between this publication and final settlement. However, our Firm will follow the recommendations of the National Association Of Realtors, the Wisconsin Realtors Association, the Greater Milwaukee Association Of Realtors, MetroMLS, and our in-house legal counsel.

    To be clear, once published, these procedures will be followed by all personnel without exception(s). For the purposes of this Policy, personnel shall include all involved in a real estate transaction including, but not

limited to, independent contractors (real estate sales agents & brokers), transaction coordinators, employees, interns, and if applicable, any subcontractors doing business with the Firm.

7. **Exceptions.** The Firm fully recognizes the seriousness of the NAR & RE/MAX settlement. The Firm, and it's personnel, accept the following changes without exception. The Firm admits no wrongdoing as a result of this settlement. This policy may be revised if procedures change related to this settlement, or any appeals, court orders, or legal precedents occur.

8. **Severity & Discipline.** Any agent circumventing this policy will be disciplined up to termination. Once the settlement has been concluded, these policies must be followed in strict accordance with the settlement. Any agent, independent contractor, broker, or transaction coordinator that defies this policy and the settlement terms, loses the settlement protection from RE/MAX, the Firm, and the National Association Of Realtors.

   Attorneys for the plaintiffs have made it known that they will be watching our industry post-settlement. In fact, the Department Of Justice has made it clear that this settlement doesn't go far enough. In any case, agents MUST adhere to these procedures and any that may come here forward.

   Agents should consider themselves fortunate to have a strong legal leadership team within the Wisconsin Realtor's Association. Wisconsin customers have always had pro-consumer procedures in place, as well as being the only state with the exclusive use of state-approved forms. Wisconsin has utilized Buyer Agency for decades, so this shouldn't be overly new to our agents and staff.

9. **New & Revised Forms, References.**

   a. **NAR References.** In conjunction with the NAR settlement, the NAR has established the following website to assist in answering agent & consumer questions, as well as to form procedural guidelines for Firms. Agent and staff shall become familiar with the Frequently Asked Questions ("FAQ") and ask questions if they need guidance. The site is: https://www.nar.realtor/the-facts/nar-settlement-faqs.
   b. **WRA-BDCU | Disclosure To Customers.** The WRA recently revised this form to include language applicable to this settlement, as well as to clarify portions of the form as it relates to representation and compensation. See below for procedures related to this form.

   c. **WRA-CA | Compensation Agreement.** The WRA has created this form to essentially allow firms to agree to compensation, ideally prior to an offer being drafted. This is a firm-to-firm form and not a consumer form. See below for procedures related to this form.

   d. **WRA-CD | Compensation Disclosure.** This form is a temporary form designed to be used for current listings and Buyer Agency agreements with an agreement date prior to August 17th, 2024. For agency agreements dated August 17th, 2024, and beyond, this form is not needed. See below for procedures related to this form.

   e. **WRA-PASA | Pre-Agency Showing Agreement.** There are many instances wherein agents find themselves showing homes to people they don't know, or haven't met before. Customers may be reluctant to sign forms with someone they don't know yet or haven't worked with yet. This form addresses the definition of "Pre-Agency" and quantifies the relationship between customer and agent in a pre-agency status. See below for procedures related to this form.

(continued)

10. **Procedures.**

As it relates to the above forms, as well as to ensure compliance with the NAR settlement, RSF has enacted the following policy and procedures. Each scenario brings with it different facts so be sure to check with your manager or Broker Owner when needed. There cannot be any deviation from these procedures. The term "agent" is synonymous with independent contractor herein.

a. **Buyer Agency Requirements.** When completing the Buyer Agency agreement with a new client, there are two main requirements that must be included during execution of this contract: 1) a range of property price the Buyer is attempting to procure; 2) a conspicuous compensation amount; this compensation amount cannot be listed as anything other than a specific dollar amount, expressed either in dollars or percentage or both. The agent cannot enter something similar to "whatever is offered by a Seller", or, "2.0-2.4%". The amount cannot be open-ended. Other settlement language requirements have already been addressed by the WRA and the form revised accordingly.

b. **New Buyer – Not Known To The Agent – Showing Requested:** In situations where an agent is contacted by a client not known to them, nor under an RSF current agency agreement, the customer shall follow these steps.

i. The customer shall be given the **Pre-Agency Showing Agreement** ("PASA") form prior to showing any properties. The agent shall provide a copy to the customer and ask them to sign a copy for the Firm.
ii. A Disclosure to Customer isn't a substitute for the Pre-Agency Showing Agreement and should not be entered into quickly. Once signed, this customer is "locked in" to the Customer status. The use of the PASA should be used as long as possible when showing homes until such time as the determination of representation must be made.
iii. The agent will have to determine the difference between the proper use of the Disclosure to Customer form & status or the Pre-Agency Showing Agreement based on where the relationship is at the time.
iv. Buyer(s) will be required to sign a PASA or Disclosure To Customer prior to showing homes. If Buyer(s) do not sign the PASA form, or the Disclosure To Customer, the agent shall refuse to show the home.

c. **New Buyer – Open House Attendee:** Attendees who attend an open house don't tend to fall into these categories.

i. Buyers simply attending an open house do not need to sign a Disclosure to Customer form, or a Pre-Agency Agreement.
ii. Buyers MUST sign-in during the open house and if they do not, they should be denied access. The seller has a right to know who enters their home.
iii. If the agent eventually begins working with a client they met at an open house they will need to follow the procedures outlined in section a.

d. **Current Buying Client – Already Under A Buyer Agency.** For Buyers who are currently under a Buyer Agency agreement, and that Buyer Agency agreement was signed prior to August 17th, 2024, the agent shall follow these procedures.

i. For all current & "active" Buyer Agency agreement clients, have the client and agent review and sign the WRA-CD.
ii. The form should be reviewed and discussed with the client and compensation detailed.
iii. If the current Buyer Agency agreement does not list a specific, achievable, and realistic compensation the Buyer Agency shall be amended.
iv. Both client & agent shall understand that there is no standard amount or level of compensation. Compensation has, and probably always will be, negotiable.
v. The amount of compensation must be clearly listed in the Buyer Agency.
vi. Compensation may not be listed as, as an example, "Whatever is listed in MLS or offered by Seller".

vii. If the agreed-upon amount of compensation listed in the revised Buyer Agency agreement is not the same as what a Seller eventually offers the Buyer, or if the amount of compensation negotiated is different than that in the Buyer Agency agreement, the following shall be considered and followed:
    1. The Buyer Agency agreement is between the client & Broker.
    2. The Buyer Agency cannot be altered without the prior written permission and agreement of Broker and client.
    3. The amount of compensation may vary from client to client, but the agent must know and understand their value and negotiate their compensation accordingly.
    4. Careful consideration should be given to the determination of compensation based on numerous factors.
    5. Buyer agency agreements may only be amended with permission from the Broker Owner. Be careful not to agree to amending the Buyer Agency without first conferring with the Broker Owner or Designated Manager.

e. **Current Selling Client – Already Under A Listing Contract.** For Sellers who are currently under a listing agreement, and that listing agreement was signed prior to August 17th, 2024, the agent shall follow these procedures.

i. For all current & "active" listing agreement clients, have the client and agent review and sign the WRA-CD.
ii. The form should be reviewed and discussed with the client and compensation discussed.
iii. If the current listing contract contains an Offer Of Compensation, "OOC", formerly known as a "co-broke" commission, the OOC shall be listed on form WRA-CD.
iv. Both client & agent shall understand that there is no standard amount or level of compensation.
v. The amount of compensation must be clearly listed in the listing contract & WRA-CD.
vi. Compensation may be negotiated even after an OOC is published publicly.
vii. Compensation to another Firm's agent MUST be requested, and subsequently approved, through the Offer To Purchase, in the Offer itself and between parties.
viii. The display of an OOC from the Seller to the public **does not constitute an agreement of compensation between firms**. Agents MUST include the Offer Of Compensation in their Offer To Purchase and this must be negotiated between parties.
ix. The Firm will not compensate other Firms, their agents, nor sub-agents, unless the OOC has been negotiated by Seller by means of the Offer To Purchase.
x. The practice of MLS clear cooperation remains in effect, and MLS maintains it's integral place in our toolbox of listing tools, however, the MLS will not display any levels of compensation beginning August 14th, 2024.
xi. Previous showings that occurred under a previous listing contract shall be honored as published through the MLS clear cooperation rules. (Example: if another agent showed an RSF listing prior to August 14th, 2024, and the offer is accepted & closes, and an offer of compensation was published in the MLS, RSF will pay that "co-broke" commission. However, agents should be cautious not to accept Offers Of Compensation listed in another Buyer's Offer To Purchase when a published MLS "co-broke" is listed. The Seller could be subject to paying both in this scenario.

f. **Current Selling Client – Unknown Buyer Request Showing.** When a Buyer requests a showing on our listing, and an agent does not have a relationship with this new Buyer, the following should be followed.

i. The customer does not have to sign an agreement to tour the home.
ii. The agent has a duty to ask the Buyer if they are under a Buyer Agency agreement – or a PASA – with any other agent. This is an ethical obligation created agreed upon by the agent as a member of NAR.
iii. Both client & agent shall understand that there is no standard amount or level of compensation.

1. If presenting the PASA, the agent should clearly indicate to the Buyer that there is no creation of "representation" by this agreement, and the agent is expressly prohibited from performing representation-related tasks for Buyer until under a Buyer Agency agreement. Such tasks that are prohibited include, but are not limited to, advising Buyer(s) on what price or terms to offer in a future offer. The agent is neither a representative of the Seller or Buyer at this point.

iv. Optionally, listing agents may refuse to show the home to Buyers that refuse to sign the PASA if Seller is in agreement with this practice. No different than an open house, the Seller has the unilateral right to refuse to restrict access to their Property if Buyers refuse to provide their identity. As always, Seller's wishes shall be in writing in the Listing Contract.

v. Also optionally, the agent, prior to any showing of the agent's listing, may add the following language to the PASA prior to agreeing to show any home: "By execution of this agreement, Buyer(s) acknowledge they are not under another Pre-Agency Showing Agreement nor a Buyer Agency agreement with another Firm".

g. **<u>When Customer Or Client Refuses To Sign Forms</u>.** In instances where the agent dutifully presents the appropriate form(s) to the buyer(s) and the customer or client refuses to sign the appropriate form, the following shall apply.

i. **Disclosure To Customer**. The Disclosure sets a clear agreement that the agent works for the Seller – not the Buyer. Be careful not to present this to the Customer before establishing whether or not Buyer Agency would apply. When Buyer Agency is no longer an option – or won't be in the future - document on the form that you presented the form to the customer, provided them with a copy, and file the document in your client file. You may show the property despite not receiving signature(s).

1. From here forward be mindful of the fact that you do not represent the Customer – you will be representing Sellers here forward. You can draft offers, but, you will not be able to represent them by guiding them on what to offer price-wise, contingency-wise, etc.
2. NOTE: Before drafting an offer, contact the listing agent to ascertain whether or not the Seller is offering sub-agents compensation. If so, have both Firms establish compensation through the Compensation Agreement form.
3. Agent are PROHIBITED from asking for compensation in an Offer To Purchase as a sub-agent.

ii. **Pre-Agency Showing Agreement**. Advise the client that per the new NAR/WRA rules you are unable to show them properties until they sign. Note the form's section that refers to compensation and that the customer does not have to compensate you at this time. If the customer does not sign the form you are prohibited from performing real estate services including showing the propert(ies) to the Buyer.

iii. **Buyer Agency**. At some point the customer usually leaves "pre-agency" and a decision needs to be made as to whether or not you represent the Buyer(s) under Buyer Agency or sub-agency (Disclosure to Customer). If the Buyer does not wish to sign the form and be represented under Buyer Agency, you are prohibited to advise them on price, offer contingencies, etc. and are operating as a sub-agent for the Seller. Contact the listing agent prior to drafting the offer and complete the **WRA-CA Compensation Agreement** form between firms.

h. **<u>Displays of Compensation – Seller Offers Of Compensation</u>**. As per the settlement agreement, MetroMLS is prohibited to allow Offer of Compensation (OOC) anywhere in MLS. This includes sites or showing services that directly feed from MLS. Therefore, the following rules apply effective 8/14/24.

i. No references to compensation may be made in MLS. That includes, but is not limited to, Public Remarks, Private Remarks, in photographs, or in any way affiliated with MLS.

ii. Effective 8/14/24, MLS will allow listing agents to select whether or not the Seller is offering "concessions". Concessions are not a mask or substitute for OOC – concessions are credits or items Seller is offering as an incentive to Buyer to purchase the property. Examples include, but are not limited to, a $2,000 published credit for worn carpet & replacement;

$5,000 credit to Buyer(s) to "buy-down" their interest rate as an incentive to purchase the property.

iii. **Fines**. MetroMLS has indicated that violations carry a sanction of $1,000 for each occurrence; MLS has adopted a conservative approach to the interpretation of what they believe is a violation and will act accordingly. The Firm will not assume responsibility for any fine(s) levied to an agent who is not in compliance with MLS' rules and this policy. If any current or future MLS rules contradict this policy, MLS' rules shall apply.

iv. **Acceptable Forms Of Advertising Offers Of Compensation**. Until otherwise noted or advised, the following advertising methods may be utilized to advertise a Seller's Offer Of Compensation:

1. Sign riders
2. QR Codes
3. Landing Pages
4. Personal/Team/Office Social Media sites
5. Texts, Emails

The following cannot contain any references to any Offers Of Compensation:

1. MetroMLS – any portion of the MLS including public & private remarks
2. Photographs – no photos or OOC or any cryptic references
3. Documents uploaded to MLS
4. No references to compensation in any form, including links to sites

i. **<u>Duties Of Confidentiality</u>**. All agency agreements are confidential documents and shall never be shared with other firms, agents or clients. Buyer compensation agreements are between the Firm and Client(s) and shall not be shared. Exceptions to this are limited to title companies performing ancillary services to the Client and Firm. Confidential documents should never be released to anyone, including attorneys, without consulting with the Broker Owner.

j. **<u>Miscellaneous Provisions</u>**. The following shall also apply, or may assist you in understanding these new procedures.

i. Multiple agreements may apply to the same Buyer throughout the purchase process.
ii. Agent shall understand each available form and know which form to use at the appropriate time, based on where the Buyer is during the purchase process.
iii. When needed, consult with your office manager or Broker Owner for advice.

k. **<u>Current Listing Offers</u>**. It is extremely important for current listings, until MLS removes the "co-broke" commissions, that if RSF Listing Agents understand that if a "co-broke" commission is offered

July 2024 WB forms revisions

- WB-1 — Residential Listing Contract — Exclusive Right to Sell
- WB-2 — Farm Listing Contract — Exclusive Right to Sell
- WB-3 — Vacant Land Listing Contract — Exclusive Right to Sell
- WB-4 — Residential Condominium Listing Contract — Exclusive Right to Sell
- WB-5 — Commercial Listing Contract — Exclusive Right to Sell
- WB-6 — Business Listing Contract — Exclusive Right to Sell
- WB-11 — Residential Offer to Purchase
- WB-12 — Farm Offer to Purchase
- WB-13 — Vacant Land Offer to Purchase
- WB-14 — Residential Condominium Offer to Purchase
- WB-15 — Commercial Offer to Purchase
- WB-16 — Offer to Purchase — Business With Real Estate
- WB-17 — Offer to Purchase — Business Without Real Estate
- WB-24 — Option to Purchase
- WB-36 — Buyer Agency Agreement
- WB-37 — Residential Listing Contract — Exclusive Right to Rent
- WB-38 — Commercial Buyer Agency/Tenant Representation Agreement
- WB-39 — Tenant Representation Agreement
- WB-47 — Amendment to Buyer Agency/Tenant Representation Agreement

These revised WB forms have an optional use date of July 1, 2024, and a mandatory use date of August 15, 2024.

AGREEMENT – POLICY 2024-002

I have read, understand, and agree to comply with the foregoing policies, rules and procedures. I am aware that violations of this guideline may subject me to disciplinary action, including removal from lead generation systems and/or company leads altogether, termination, legal action and criminal activity. I further understand that I have a responsibility to maintain any company lead or client databases and not share company information without express written permission from company. I further understand that policies can be amended at any time.

_____ Date ____/_____/_____
Name