

## **Commission Position 9 - Working with a For Sale by Owner (FSBO)**

(Recodification adoption June 7, 2022: CP-13 Commission Policy on Single-Party Listings recodified to CP 9 - Working with a For Sale by Owner)

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### Representing a Buyer Interested in a FSBO:

Brokers representing a buyer who engage an owner with a property for sale by owner should have an open and frank discussion with their client on how they would like to move forward with a possible purchase offer prior to contacting the owner for a showing. The Broker should review the Listing Contract with the buyer, specifically Section 7 titled Compensation to Brokerage Firm, and how it applies in those circumstances. The Broker should also discuss any potential implications of the Brokerage Relationship with the buyer when entering into a Listing Contract with the owner, such as changing the Brokerage Relationship with the buyer by completing the Change of Status Form if applicable or in the alternative treating the owner as a Customer. (Note: The ability to be able to submit a Change of Status form will be dictated by how the buyer Listing Contract was executed in Section 4.3.).

### Treating the Owner of a FSBO as a Customer:

A Broker representing a buyer may also decide to treat the owner as a Customer for the purchase of the owner's property. If the owner is offering a cooperating success fee, the Broker should have a written compensation agreement executed with the owner of the property. The compensation agreement should specify the success fee to be paid to the Brokerage Firm upon successful closing of the transaction. The Broker must properly disclose the working relationship with the owner by giving the Commission-Approved Brokerage Disclosure to Seller and checking the box indicating that the Broker will be treating the owner as a Customer. While there is no Brokerage Relationship with the owner, the Broker may perform ministerial tasks as set forth in Rule 6.8. to include showing the property, preparing, and conveying written offers, counteroffers, and agreements to amend or extend the contract.

### Single-Party Listing with an Owner of a FSBO:

A Broker may secure a single-party Listing Contract with the unrepresented owner when the Broker believes they have a buyer interested in purchasing the property. The listing period is typically for only a few days and is limited to only one buyer while the Broker works with that buyer to submit the Commission-Approved Contract to Buy and Sell Real Estate.

If the Broker chooses to request a single-party Listing Contract, the Broker must explain the terms and conditions of the Listing Contract fully to the owner. For instance, the owner may not realize that if the owner signs a Listing Contract with another Broker, the owner may become liable for the payment of two commissions for the same buyer.

### Open House of a FSBO Property:

A Broker who contemplates holding an open house for an owner not represented by a Brokerage Firm to assist the owner in securing a buyer for their property or for purposes of prospecting future clients should take care not to violate the license law. A Broker needs to have a discussion on Brokerage Relationships with the owner and the options available to the owner for holding an open house. The Broker and owner may decide to enter into a short-term (i.e., 48 hours) seller Listing Contract. On the other hand, the Broker may decide to treat the owner as a Customer.

*All defined terms referenced in the Commission Position statements are codified in 4 CCR 725-1, Chapter 1 of the Rules regarding Real Estate Brokers.*

If entering into a short-term seller Listing Contract with the owner, the Broker should discuss the terms of the holdover period and that the Broker will provide a written list of prospects to the owner that the Broker negotiated with during the listing period. The Broker must perform all the uniform duties which includes presenting all offers even if the offer is from a buyer who has a Brokerage Relationship with another Broker during the listing period. Should Broker elect to establish an agent relationship with the owner, Broker will be required to perform the additional duties of seller's Agent as outlined in Section 6 of the Listing Contract in addition to the uniform duties.

If the Broker will be treating the owner as a Customer during the open house, the Broker must give the Commission-Approved Brokerage Disclosure to Seller indicating that the Broker will be treating the owner as a Customer. The Broker must take care not to engage in any Real Estate Brokerage Services for the owner and may only perform ministerial tasks as set forth in Rule 6.8 and/or Advertise the property as set forth in Rule 6.10.F.2. Additionally, the Broker must disclose to all prospective buyers that the Broker is not representing the owner. For those buyers that are not working with another Broker, the Broker must provide the Commission-Approved Brokerage Disclosure to Buyer stating that they will be acting as a Transaction-Broker for the buyer. Alternatively, the Broker may also execute a Listing Contract with the buyer and establish either an Agent or Transaction-Broker relationship.

Advertising a FSBO:

A Broker who Advertises property for an owner who is not represented by a Brokerage Firm must have the owner's written permission and disclose in a conspicuous manner that the owner is not represented by a Broker as set forth in Rule 6.10.F.2. The dissemination of the owner's Advertising cannot include submitting the information into a property exchange or multiple listing service.