



Is there a buyer agency form that does not obligate my client to pay my fee?

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Bill Gifford, Martin & Gifford, PLLC

QUESTION: I have a close friend who would like to use me as her agent in the acquisition of a new house. I told her that while I normally charge a specific percentage of the purchase price as my fee, in her case I would expect that fee to be paid solely by the listing firm, and that I would not expect her to pay me under any circumstances. When I look at paragraph 4(b)(ii) of Standard Form 201, it states that the Buyer agrees to pay some compensation to my firm in a couple of circumstances. Would it be appropriate for me to cross out that subparagraph? Or is there a better way to document the agency agreement with my friend?

ANSWER: We have written on this subject twice before but, since it has been nine years since the last such article, we understand why you might not remember our guidance. Links to those two articles can be found [here](#) and [here](#).

There are really two options available to you. If you are willing to represent your friend in any situation, even if she decides to purchase a house that is “For Sale by Owner,” and the owner is unwilling to offer you any compensation at all, then one option is to stick with the Exclusive Buyer Agency Agreement (Standard Form 201) and cross out paragraph 4(b)(ii). Keep in mind that, unlike the Non-Exclusive Buyer Agency Agreement (Standard Form 203), which gives the Firm the right to unilaterally terminate that Agreement if the compensation offered by the seller or listing firm is less than expected, Standard Form 201 commits the Firm to the agency relationship regardless of whether any such compensation is offered.

If you want to keep the ability to terminate your agency agreement, the second option is to use the Non-Exclusive Buyer Agency Agreement. Paragraph 3(a) of that form states explicitly that the buyer is not obligated to either pay a brokerage fee or to assure the payment of such a fee to the Firm. The possible downside to using Form 203 is that, pursuant to paragraph 3(d), the Firm’s compensation is only earned if, during the term of the agreement, “Buyer directly or indirectly enters into an agreement to purchase, option, and/or exchange property introduced to Buyer by Firm.” Since the use of Standard Form 203 permits a buyer to look at properties with another agent, or use no agent at all, buyer agents considering its use should consider the risk that their buyer client may look at properties without them.

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