Sample Buyer Representation Agreement Commentary

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COMMENTARY ON SAMPLE BUYER-BROKER REPRESENTATION AGREEMENT

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Introduction

The National Association of Realtors (NAR) settlement has caused major upheaval in the real estate industry. One of the biggest changes is that realtors need to have agreements in place with buyers prior to showing them properties; the agreements must spell out the maximum compensation a broker will receive. There are hundreds (or maybe thousands) of different versions of these buyer agreements out there. Some are crafted by state regulatory bodies; some by state and local realtor associations; some by MLSs; some by private brokerages. Largely all are drafted with the interests of the broker (not the buyer) in mind.

The reality is that buyers do not have the opportunity to negotiate the content of these forms beyond specifying what goes in the blanks (e.g. commission rate, property preferences, etc.). It is highly unlikely that a buyer would be able to negotiate "out" terms they don't like.[2] And since all brokerages tend to have the same sorts of terms, the buyer is left with two choices: a) sign the contract that is put in front of him even though it has bad terms; or b) do not hire an agent. Certainly, this is a problem consumers face every day.[3] Consumers don't get to negotiate with banks, airlines, online retailers, and phone service providers over the terms of their contract.

Buying a house, though, is a different sort of transaction than ordering a desk lamp from Amazon or agreeing to the T-Mobile Magenta plan. It is a personal services contract involving a transaction that will likely represent the biggest purchase of a person's life. Because of this, I think—at a minimum—the average person should be able to understand what they are agreeing to.

In an excellent article that is forthcoming in the Columbia Business Law Review, Professor Blasie writes:

[1] Professor, University at Buffalo School of Law. I would like to thank the following individuals who provided valuable feedback on the sample contract: Andrea Boyack (Professor, University of Missouri School of Law), Samuel Becher (Professor, Victoria University of Wellington School of Law), Michael Blasie (Dean, Kazakhstan Institute of Management, Economics and Strategic Research (KIMEP) University School of Law), Prentiss Cox (Professor, University of Minnesota School of Law), Wendy Gilch (Deputy Director, Consumer Advocates in American Real Estate), and a real estate attorney with a NAR-affiliated association who wished to remain anonymous.

[2] Much of the advice offered by consumer groups and the media is geared toward placing the onus on the consumer to negotiate. This fails to recognize that brokerages will simply not negotiate on the standard terms of the contract.

[3] *See generally* David Hoffman, *Defeating the Empire of Forms*, 109 VA. L. REV. 1367 (2023).

> So what if consumers can't understand contracts? They don't read contracts. They can't negotiate contracts. All their contracts have the same unfair terms. . . . Choice is an illusion. Consumer understanding is a pipedream. *Even so, contracts should still be understandable*. . . .
>
> Under the longstanding duty to read, if consumers choose to enter contracts without reading and learning the terms they do so at their own peril. But . . . implicit in this duty is the assumption that consumers could understand a contract. And now is the time for change.[4]

Understandable Contract Language

Although you wouldn't know from looking at these contracts, realtors are under an obligation to make sure that contracts are written in "clear and understandable language." Article 9 of the Realtor Code of Ethics provides:

> REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. . . .

Very few contracts I have seen would satisfy the "clear and understandable language" threshold that the industry *itself* imposes upon NAR-affiliated participants.

In drafting a sample or model buyer representation contract I have attempted, foremost, to make the contract understandable. Doing so means that a little bit of the precision is lost and that not every permutation of every conceivable scenario is covered. This was a deliberate decision.

For the one-in-a-thousand scenario where the buyer secretly gets his brother to purchase the property to avoid paying a broker commission, let the courts sort this out (even without a clause in the contract, you have a very good argument that the brother is an agent of your buyer).

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[4] Michael A. Blasie, *The Duty to Make Contracts Understandable*, ___ COLUM. BUS. L. REV. ___ (forthcoming). *See also See* Uri Benoliel and Shmuel I. Becher, *The Duty to Read the Unreadable,* 60 B.C. L. REV. 2255, 2263 ("Put simply, for the duty to read to be fair and efficient, consumers must be able to read their contracts. As noted, however, the duty to read is not accompanied by another corresponding duty that requires suppliers to provide readable contracts. Stated differently, the duty to read is one-sided: the burden is placed only on consumers, who are assumed to comply with the duty.").

I have employed commonly recognized methods of improving consumer comprehension including:[5]

1. Keeping the agreement short so buyers are not deterred from reading it[6]
2. Using active voice
3. Using simple, non-legal language
4. Using a normal font size and color[7]
5. Writing in short sentences
6. Having appropriate section headers
7. Using a simple organizational scheme (only three sections and signature block)
8. Employing white space and formatting to improve readability
9. Avoiding defined terms
10. Avoiding over-formatting (e.g., too many ALL CAPS,[8] or **bold** or <u>underline</u>) which tends to distract the reader
11. Avoiding cross-references

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[5] For a discussion of these and other principles associated with user-friendly contracts, *see generally* Uri Benoliel and Shmuel Becher, *Messy Contracts*, 3 UNIVERSITY OF ILLINOIS LAW REVIEW 893 (2024). On plain English drafting generally, *see* https://www.plainlanguage.gov/media/FederalPLGuidelines.pdf.

[6] The agreement itself is only 2 and a half pages (the signature block takes up half a page). It is just over 1000 words (counting the titles, headings, signature blocks, etc.). By contrast, the New Mexico Association of Realtors' buyer representation agreement is five times as long—almost 5000 words! This would likely take over 40 minutes just to read (based on the assumption that reading a legal document would be done at "slow reader" speed). *See* https://capitalizemytitle.com/reading-time/5000-words/.

[7] The agreement is in 12-point black standard font. I selected Aptos, which is the Microsoft Word default. I'm assuming that Microsoft put some thought and research into selecting the font that was the most readable as their default. Many of the agreements out there are in 10-point font (or smaller), in a light-colored font, or in a narrow typeface that is difficult to read.

[8] On the "ALL CAPS" point, *see* Yonathan A. Arbel & Andrew Toler, *ALL-CAPS*, 17 J. EMP. L. STUD. 862, 865 ("The evidence shows that all-caps fail to improve consumer consent in any appreciable manner. . . . [W]e find (limited) evidence that all-caps may make it harder for older readers to notice and process their contractual obligations. In our primary group, respondents over the age of 55 were 29 percentage points more likely to misunderstand their obligations when the paragraph was capitalized than their age peers who read the paragraph in low-caps. These findings demonstrate the failure of the widespread all-caps policy.").

All these techniques are components of what is commonly known as "plain language" drafting:

> Plain language—sometimes called "plain English"—refers to drafting a document in ways that maximize the understandability of a document's contents. Plain language is a reader-focused concept. According to the Plain Language Association International, a "communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information."
>
> How a drafter designs a document to use plain language varies depending on both the document and the reader. Plain language drafting principles include knowing the document's intended reader (which can affect decisions like vocabulary choice), deciding what content to include or exclude, determining how to organize information to aid understanding, and using clear writing techniques, which can range from creating bullet points and charts to avoiding double negatives. There is no definitive list of plain language writing techniques.[9]

My general audience for the buyer representation agreement is a prospective homebuyer in the United States with some high school education.[10]

Fairer Terms for Buyers

The sample contract also recalibrates the balance between the interests of the broker and the buyer. It attempts to ensure that the terms are fair to buyers, who will have no say in the substantive terms of the contract and will be forced to take-it-or-leave-it.

Some brokers will feel like this contract is too "buyer friendly." Perhaps it is. Reasonable minds can differ on where to draw the line.

With anyone considering revising their forms, I would ask:

> Do you really need this provision in there? Why?
>
> How likely is this scenario to happen?

[9] Michael Blasie, *Regulating Plain Language* 2023 WIS. L. REV. 687, 693 (2023).

[10] Census data shows that over 50% of Americans do not have a college degree. https://www.census.gov/newsroom/press-releases/2023/educational-attainment-data.html. And about 54% of Americans have "a literacy below a sixth-grade level." https://www.thenationalliteracyinstitute.com/post/literacy-statistics-2024-2025-where-we-are-now.

And how much "protection" will this provision really give you?[11]

Brokerages and realtor associations will need to make decisions on which direction to go with their forms. They can keep using their seven-page, 10-point font, single spaced contracts that no one will read or be able to understand. Or they could prioritize making contracts fair and understandable for the party with no power in the transaction—the buyer.

Intent Behind Crafting a Sample Contract

I have released four reports now where I criticize contracts.[12] It's sometimes easy to take shots from the cheap seats, which is why I have attempted to create something that reflects the type of contract I think brokers should consider using.

My sample contract is an attempt to move the conversation forward in a practical direction. The sample can be a starting point for creating new forms from scratch or modifying existing ones. It also, I think, serves as proof that things do not need to be written in legalese to convey meaning.

This sample contract is not necessarily intended to be used as-is. Brokerages and realtor associations need to make sure that their contracts comply with state law.[13] For instance, certain states prohibit dual agency; the dual agency provisions in the sample contract would need to be modified to reflect that. Other states may require that the contract contains certain statutory language or disclaimers. It is the responsibility of brokerages and drafters of these forms to ensure that they are fully compliant with state law.

In Appendix A, I explain my thinking on why I included certain provisions and why I drafted them the way I did. In Appendix B, I explain my rationale for excluding several provisions that normally appear in buyer representation agreements. As I said above, ultimately this is a judgment call—one that prioritizes fairness and simplicity for a buyer.

I urge state and local realtor associations, MLSs, state regulators, and private brokerages to do better when it comes to creating fair and understandable contracts for consumers. I do not purport to have created the perfect template. And there are certainly scenarios that I may not have sufficiently considered. The point, though, is that *we can and should do better*.

[11] On this last point, you can write that you are "not liable for x, y, and z" half a dozen times in a contract, thinking this gives you full protection. It doesn't. A court can find you liable despite your attempt to insulate yourself from liability in writing.
[12] Reports available at: https://www.law.buffalo.edu/faculty/facultyDirectory/monestier-tanya.html.
[13] There may also be requirements imposed by insurance providers to consider.

Appendix A: PROVISIONS INCLUDED

PROVISION INCLUDED	RATIONALE
Commission owed only if the buyer successfully closes on a transaction	Almost all representation agreements state that commission is owed not only if a transaction closes, but if: a) a buyer breaches a contract to purchase property; and/or b) if a buyer breaches the representation agreement itself. Usually, a buyer does not breach a purchase agreement willy-nilly. There tend to be extenuating circumstances (e.g. financing difficulties after contingencies have been removed, change of circumstances, heath issues, etc.). Buyers will likely forfeit their earnest money deposit in these circumstances. It seems unreasonable to also ask them to pay a full commission on a property that they did not purchase—particularly if they continue to look for a property post-breach. The counterpoint, of course, is that the agent did work for the buyer and should be compensated for that work. Most agents, I think, would not "go after" their buyers for commissions in failed transactions.[14] If that is true (and it may not be), then it makes sense to remove the provision to eliminate this concern for buyers. Ultimately, this is a judgment call where I think the risk should fall on the agent, not the buyer.
Detailed guidance spelling out when the buyer owes commission	The draft contract makes very clear that the buyer ultimately owes the commission. The draft also spells out two possibilities where the buyer could get assistance from the seller: through a direct offer of compensation or through concessions.

[14] I received an email from an agent in Mississippi that reflects what I believe is a widespread sentiment among buyer agents: "I'm a 30-year Realtor from [Mississippi]. I've read the new and amended documents from the state association a hundred times (only a slight exaggeration) and when I came to the part of your paper covering the fact that buyers would owe compensation if they defaulted I thought 'our form doesn't have that provision', well it does. In the future I'm just going to strike it. I've never been paid for a transaction that didn't close, no use starting now."

	With the direct offer of compensation, the draft contract explains what happens if the offer is less than the agreed-upon commission and what happens if the offer is more than the agreed-upon commission. Concessions are dealt with in a separate section. **Important Note:** I am aware that some consumer advocates do not believe that advance offers of compensation from a seller or a seller's broker are consistent with either the settlement or antitrust laws. It appears to me, however, that these offers of compensation are not prohibited by the settlement.[15] Indeed, the settlement clearly spells out that offers of compensation can be advertised anywhere, except in the MLS. While I would prefer that the industry move to the model espoused by the Department of Justice (full decoupling; buyer may ask for a concession in the offer), we don't seem to be there yet. As such, I have drafted the document to reflect current practices.
Concessions	Initially, I drafted this section to say that if the amount of the concession was less than the agreed-upon commission, the buyer would owe the difference (to parallel the section with direct offers of compensation). I ended up removing this language because I did not want to conflate concessions with compensation. Concessions are funds that the seller offers to the buyer that can be used for any allowable purpose; how the buyer chooses to use this money is up to them. Accordingly, it wouldn't be quite accurate to say that if the amount of the concession is lower than the agreed-upon commission, the buyer will owe the difference. This would imply that concessions and commissions are somehow tied. A reviewer pointed out that the section on concessions was not a typical contractual provision—it read more like a "strategy" (i.e., this is how you can get money to cover the cost of commission). I agree with this observation. But I think it is important to convey in the representation agreement itself the two different ways that a buyer may be able to defray the cost of the commission.

[15] Whether they are unlawful remains an open question.

Buyer right to cancel	A buyer should have the right to cancel a contract if things aren't working out with the agent. He should not have to wait 90 or 120 days (for example) to do so. I've drafted a provision that allows a buyer to cancel a contract at any time. Subsequently, the agent will prepare a list of properties for which the agent provided brokerage services. If the buyer purchases one of these properties within a set time, the buyer will owe commission to the broker when the transaction closes.
Broker obligation to disclose compensation received from third parties	This provision concretizes obligations that are already owed under the Realtor Code of Ethics: **Article 6** REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent. <u>When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees</u>, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. I have not included a provision in this contract for the broker to disclose referral fees paid to other real estate industry participants, though I believe this practice warrants additional scrutiny. *See, e.g.,* https://consumerfed.org/wp-content/uploads/2020/09/Real-Estate-Referral-Fees-Report-9-21-20.pdf.
No modification upwards of broker's compensation	I do not think that the NAR settlement permits agents to modify their compensation upward after a representation agreement has been signed. Accordingly, I have included a provision to this effect in the draft contract. I have also addressed what some realtors are using as an alternative to modification—cancelling the original agreement and then signing a new agreement. In my view, both are

	prohibited by the NAR settlement's directive that the broker may not receive more than agreed to in the (original) contract with the buyer. There is an open question as to whether the NAR settlement permits agents to reduce their compensation via a modification. I believe this is allowed under the settlement, even though widespread adoption of this practice would largely undermine the settlement. However, I do not think a modification (signed by the buyer) is necessary; the agent would just waive some, or all, of the commission.
Broker negotiating for buyer to receive excess commission	The NAR settlement is clear that the buyer's broker cannot receive any compensation offered by the seller or seller's broker that exceeds the amount agreed to in the broker's agreement with the buyer. So where does the excess go? This sample representation agreement says that the broker will negotiate for the excess to go to the buyer. Some people believe that the excess automatically goes to the buyer—i.e., there is no need for negotiation. The broker, in other words, will pass the money that was originally intended for the broker onto the buyer. I don't know if this is permissible under the settlement. In my view, there are two reasons why it is not self-evident that any excess automatically goes to the buyer: 1. NAR settlement language: "such a REALTOR® or Participant **may not receive compensation** for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer." If a buyer broker is redirecting the money to his client, it seems like he has "received" it. [As a separate matter, you also run the problem that rebates to a buyer are prohibited in some states]. 2. The listing agreements that spell out the offer of compensation specify that this is compensation to a **buyer's broker**. I don't think this offer can be "repurposed" by other parties in the transaction without

	the seller's consent. In other words, the seller's intention was to designate the money for the buyer's broker—not the buyer in general. If the buyer's broker is not able to "receive" all of it, the logical consequence is that it should revert back to the seller. Of course, the buyer can ask for the remainder as a concession.
Examples	Ordinarily, a contract is not the place for examples. But given the confusing nature of these forms and the reference to money as percentages (and not dollars), I have included a couple of things to help clarify the agreement for buyers: 1. A conversion chart which translates commission percentages into dollars on a $400,000 property. 2. An example of the types of service providers for which the broker must disclose a referral fee. 3. An example of when a buyer would be obligated to pay their broker if the seller/seller's broker does not offer full compensation. 4. An example of what would constitute "minimal" brokerage services not entitling a broker to compensation.
Holdover provisions	There are two holdover provisions in the contract that require a buyer to pay commission to his or her broker for a period of time: 1) after the buyer cancels; or 2) after the contract expires. In both cases, the broker must provide the buyer with a list of properties for which the broker provided more than minimal brokerage services. This will alert the buyer once again to their obligation to potentially pay commission. I don't think the holdover period should be any longer than 90 days. There are NAR rules dealing with the situation where the buyer ends up owing two commissions on the same property; I believe these rules are sufficient to guard against the possibility of the buyer paying twice.

List of Properties	As indicated above, after expiration or cancellation, the broker must provide the buyer with a list of properties for which the broker provided brokerage services. I have not defined that term in the contract, except to say that the services must be more than minimal (e.g., simply emailing a buyer a listing would not entitle a broker to compensation). This is similar to the approach of ExP Realty, which has defined what constitutes "Broker Efforts" that potentially entitles a broker to commission. That brokerage is clear that no broker fee is due if the broker's efforts simply consist of locating and presenting suitable properties to the buyer. **4.** **BROKER'S EFFORTS**. Broker will exercise good faith efforts to: (a) locate and present suitable Properties to Buyer; (b) tour and prepare detailed analysis of specific Properties, per Buyer's request; (c) help Buyer prepare, negotiate, and secure a contract to purchase one or more Properties; (d) cooperate with any real estate licensee working with the seller to facilitate and complete Buyer's purchase of the Property; and (e) perform other services as needed and requested by Buyer. **5.** **FOR BEST EXPERIENCE**. Buyer is encouraged to be accompanied by Broker on Buyer's first visit to the Property, and to conduct all negotiations for the Property in good faith, and exclusively through Broker. Buyer understands that signing more than one buyer-broker representation agreement for any overlapping period of time could expose Buyer to liability for paying additional fees. Buyer is not a party to any active, exclusive buyer-broker representation agreements. Buyer is a party to ___ (*insert number*) active, non-exclusive buyer-broker representation agreements. **6.** **BROKER FEE**. Buyer agrees to pay Broker, as provided below (the "**Broker Fee**") for any Properties involving Broker's efforts (Sections 4(b)-4(e)). No Broker Fee is due if Broker's efforts involve only locating and presenting suitable Properties for consideration (Section 4(a)). **The Broker Fee is not set by law and is fully negotiable**. The Broker Fee shall be due and payable upon successful closing. If Buyer enters into an agreement to purchase any Property within (___) days following the expiration or earlier cancellation of this agreement, then Buyer shall pay the Broker Fee to Broker upon closing. The Broker Fee shall be in U.S. currency and paid at the time, and as a condition, of closing. This agreement shall act as escrow instructions for payment of the Broker Fee to Broker. This Section 6 shall survive the expiration or earlier cancellation of this agreement.
Broker commitment to show all relevant properties	Some forms allow the buyer to "self-steer" – meaning to tell their broker not to show them properties where broker commission is not advertised in advance. This approach is contrary to the entire intent of the settlement. NAR has issued guidance to the effect that brokers must present all relevant properties to the buyer, irrespective of whether the seller is offering commission.[16]
Dual and designated agency	This provision will need to be modified in accordance with state law.

[16] https://www.nar.realtor/sites/default/files/documents/consumer-guide-realtors-duty-client-interests-2024-08-29.pdf.

	It is not fair to buyers to make them decide, in advance, whether they agree (in the abstract) to dual or designated agency. The draft contract takes the approach that the issue is resolved at the time of a potential conflict.
NAR required language	States: "Required Notice: Real estate commission are not set by law. They are subject to negotiation between buyers and brokers." This is included at the top of the document, in a shaded box in different font from the rest of the document. The language is slightly different than most forms. Most forms say that "Commissions *are* fully negotiable." I think this is confusing for buyers. The truth is that the law does not set commissions. In saying, "are fully negotiable," buyers might wrongfully expect that brokers are obligated to negotiate their fees (and they are not).
Commission based on purchase price	Many consumer groups do not support compensation for a buyer's broker based on the purchase price of the property. This is because there is a conflict between the buyer's interest (getting the lowest possible price) and the broker's interest (being paid more based on a higher purchase price). On balance, however, I believe that the simplicity of a percentage fee based on the purchase price outweighs the downsides to this model. Other models certainly exist (e.g., compensation based on amount saved; compensation based on net purchase price, etc.). But there is value to a clear and simple rule that everyone understands and knows how to calculate.
Notice	A couple of sections require a party to give notice to the other of something. For instance, if a buyer wishes to cancel the contract, he must give the broker written notice. One of the individuals who reviewed the sample contract pointed out that laypeople don't generally understand the concept of "written notice." Accordingly, I have phrased the various

	sections to say something like, “one party must let the other party know in writing.”

Appendix B: PROVISIONS EXCLUDED

PROVISION EXCLUDED	RATIONALE
Buyer responsibilities	I think buyer responsibilities are generally obvious and don't need spelling out—be responsive, consider properties the broker sends out, etc. To avoid undue length and clutter, these have been eliminated. I also have never seen a case where a broker sued a buyer for failure to fulfill these generic buyer responsibilities under the contract.
Variable rate commission	The sample contract provides for one level of compensation. There are at least two scenarios that come to mind where some might say that different levels of commission should be considered: 1. Unrepresented Seller. I have seen this in several buyer representation agreements. I do not believe a buyer should pay more because the seller does not have an agent. 2. Dual Agency. It is common in dual agency situations for the dual agent to offer reduced compensation (instead of 3%, they might offer 2%). Given that I do not think dual agency is good for anyone, I wonder about creating a monetary incentive for a buyer (or seller) to agree to dual agency. Is a buyer more inclined to forfeit independent representation to save the 1%? I am not sure. Accordingly, I have not drafted a section to deal with this issue. The bigger problem, of course, is whether dual agency should be permitted at all.
Indemnification-type provisions	There are a variety of provisions in these contracts which purport to insulate the broker from liability: e.g., "You are responsible for your own inspection; don't rely on anything I say"; "Get your own legal advice"; "I'm not responsible for any injury you suffer at any property we see" etc.

	In my view, these are not necessary, legally speaking. For instance, the law will already shield a buyer's broker from liability if a buyer trips and falls at an open house. There's no need to put that in the contract.
Obvious provisions	This is related to the point above. A number of standard forms contain provisions saying something like "I am not your lawyer, your inspector, your engineer, etc." Here is an actual example of one of these provisions: Buyer understands that Broker/Salesperson IS NOT a building inspector, building contractor, structural engineer, electrician, plumber, sanitarian, septic or cesspool expert, well driller or well expert, land surveyor, civil engineer, flood plain or water drainage expert, roofing contractor or roofing expert, accountant, attorney, title examiner or expert in identifying hazardous waste and/or toxic materials. Buyer understands that it is Buyer's responsibility to be an Clauses like this are, frankly, insulting to a buyer. A buyer understands that an agent is not a "plumber," "engineer," or "roofing expert."
Arbitration or Mediation	I don't believe home buyers should be forced into arbitration or mediation. There is a perception—rightly or wrongly—that this takes away rights from consumers. If a consumer wants his day in court, he should be able to have it.
Administrative provisions	Provisions like "this contract needs to be signed in counterparts" or "electronic signatures are sufficient" or "notices effective when postmarked" are not necessary.
Standard legal provisions	I've eliminated a number of standard legal provisions: 1. A choice of law clause: Courts will apply the law of the place where the property is being purchased. 2. Modification in writing clause: Most parties will, of course, get modifications in writing. But a buyer should not be precluded from relying on an oral promise made by a broker post-contract formation. 3. Entire Agreement Clause: A court may decide that a contract is integrated even in the absence of an entire agreement clause. Plus, like with modification,

	buyers should be able to rely on pre-contractual representations by a broker. The parol evidence rule should not provide a shield for broker statements made pre-contract signing. 4. Severability: Not needed. If one provision of a contract is unenforceable, a court will not invalidate the entire contract. 5. Confidentiality: Not needed; the law and ethical guidelines require this. 6. Gender/Calculating Date/Plural Provisions: I think these are relatively straightforward and don't to be included in a contract.
Legal notices	There may be notices that must be included in the representation agreement as a matter of state law. These will need to be drafted on an individual state basis. But, unless state law requires otherwise, a notice saying that "Broker complies with all Fair Housing laws" is probably not necessary. The broker is legally obligated to comply with the law—they don't need to say that in the contract.
Very specific provisions	Some contracts contain very specific provisions that are only relevant in a small minority of cases. For instance, one form contains a "Sanctioned Non-resident alien" provision. Unless that provision is required to be included by state law, it seems like it can be omitted from the contract—with the broker verifying up front that the intended client does not fall into this category of buyers who are prohibited from purchasing property in the state.
Attorneys' Fees	I have not included a fee-shifting provision, leaving the contract subject to the default "American Rule." I believe that the possibility of having to pay the broker's legal fees, in addition to damages, will deter even meritorious lawsuits by buyers.