

## Seller Concessions

In the run up to NAR settlement implementation, many MLSs may adopt an input field for “seller concessions” for the listing. This field may simply be a yes/no box, or it may allow a listing agent to input a specific percentage or dollar amount. Members are advised to check with their MLS.

### **What are seller concessions?**

Seller concessions – or seller credits – are defined broadly as any monetary payment to cover any buyer expense such as the costs of escrow or title, lender fees, repairs, inspections, rate buy-downs, and may also include covering the obligation of the buyer to compensate their own broker.

### **Where on the listing agreement does the seller commit to paying seller concessions?**

The Residential Listing Agreement (C.A.R. Form RLA) does not have a section to commit to seller concessions. But a new form, the Multiple Listing Service Addendum (C.A.R. Form MLSA), is attached to the listing agreement. By checking 5B(2) on the MLSA, the seller may authorize the listing agent to advertise on the MLS that the seller will consider offers in which seller concessions are requested. Note, this box alone does not grant the listing agent authority to advertise a specific percentage or dollar amount. For that, the seller must notify the broker in writing of the amount.

### **Where in the RPA can the buyer write in their request for the seller to pay seller concessions?**

There are two places. In 3G(1) of the RPA the seller agrees to credit the buyer for “closing costs” as a default. In 3G(3) the seller agrees to pay the buyer’s obligation to compensate their own broker.

### **If the seller has authorized the listing agent to advertise on the MLS that the seller is willing to consider seller concessions and to specify an exact amount, is that now binding on the seller when the buyer makes their offer?**

No. The advertising of seller concessions on an MLS is only an invitation to offer. It is only expressing the seller’s willingness to consider such offers. It won’t constitute a binding unilateral promise. Accordingly, if the seller does receive an offer in which they are asked to pay the buyer’s broker, the seller is free to accept or counter it. The counter might offer to pay only a portion of the broker’s compensation or the credit, or these terms can be countered out entirely.

### **If the seller were to counter the buyer’s request to cover their broker’s compensation, do they counter the compensation amount or do they counter the purchase price?**

Either one is ok. The seller may counter the purchase price, or the seller may counter back to reduce the compensation. If the seller chooses to counter the compensation to the buyer’s broker instead of the purchase price, then the counter should be specific by referencing the amount stated in the Seller Payment to Buyer’s Broker (C.A.R. Form SBPP). But there is no specific C.A.R. form for this.

### **Are seller concessions applied toward the total limit on lender caps?**

Fannie Mae, Freddie Mac, and the FHA have indicated that they will exclude from the caps, compensation paid to the buyer’s broker by the seller (as in the case of a buyer requesting that the seller cover their obligation to the buyer’s broker using the SPBB).