

# Commentary on REBNY Buyer Broker Checklist



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## Commentary on REBNY Buyer-Broker Agreement Checklist

New York City real estate is some of the most expensive in the world. According to data from StreetEasy, the median sales price for New York City homes sold in 2023 was \$764,000.<sup>1</sup> For Manhattan, that number is higher, with Redfin estimating it at just over \$1.2 million.<sup>2</sup> The average commission on the purchase and sale of property in Manhattan is almost 5.4%.<sup>3</sup> Let's take the averages: a buyer pays 2.2% commission on a \$1.2 million property. That's \$26,400—hardly chump change.

I was recently contacted by a reporter who wanted my opinion on the checklist drafted by the Real Estate Board of New York (“REBNY”) for buyer agreements. In particular, the reporter wanted to know whether the checklist was consumer-friendly and whether any of its provisions violated the National Association of Realtors’ settlement. Like many forms I have reviewed lately, several provisions in the REBNY document were anti-consumer (e.g., the statement that simply viewing a property listed by your broker constitutes consent to dual agency). My substantive concerns with the checklist are largely outlined in the reporter’s article, available at <https://www.brickunderground.com/buy/buyer-representation-agreement-update-rebny-checklist-nar-settlement>.

But what struck me more than the substance of the form was how badly this document was drafted. My understanding is that this “checklist”<sup>4</sup>—which is drafted in the traditional language of contracts—is designed to be used by brokerages in crafting their own forms. These forms are then used as the basis for a service contract where a buyer agrees to pay a broker, on average, over \$25,000. New York City buyers deserve better than a poorly drafted template issued by REBNY. If the “foremost voice of the industry”<sup>5</sup> can't do better than this, we have a real problem.

Much has been written about how poor contract drafting leads to consumer difficulty in comprehension. Contracts in general “contain a stunningly high proportion of features that incur processing difficulty in laypeople that can be feasibly replaced with easier-to-process alternatives.”<sup>6</sup>

Below, I explain the major drafting issues with the REBNY checklist. I have also attached a redlined markup of the document in the Appendix to illustrate just how pervasive the

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<sup>1</sup> <https://comptroller.nyc.gov/reports/spotlight-new-york-citys-homeowner-housing-market/>.

<sup>2</sup> <https://www.redfin.com/city/35948/NY/Manhattan/housing-market>.

<sup>3</sup> <https://listwithclever.com/average-real-estate-commission-rate/new-york/>.

<sup>4</sup> It is unclear to me why REBNY is calling this a checklist, when it is *not* a checklist but rather a sample contract with grid lines.

<sup>5</sup> <https://www.rebny.com/about/>.

<sup>6</sup> <https://www.sciencedirect.com/science/article/pii/S0010027722000580?via%3Dihub>.

drafting problems are.<sup>7</sup> A few of the markups reflect personal preference in drafting—but the vast majority of the redlines simply clean up incorrect grammar and inconsistencies in drafting. To be clear, even if all my redlines were accepted, this would still be a badly drafted document (but at least one that made grammatical sense and was internally consistent).

I considered reaching out to REBNY with my concerns privately. However, I was highly doubtful that REBNY would completely revamp and reissue their checklist, especially because they just released it a few weeks ago. Accordingly, I put together my thoughts in this short commentary with the hope that New York City brokerages are dissuaded from using what I consider to be a very poorly drafted template for buyer broker agreements.

Consider the following tip sheet from Georgetown University Law Center, which chronicles basic principles of contract drafting: <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Tips-for-Achieving-Clarity-in-Contract-Drafting.pdf> (“Georgetown Guide.”). The REBNY contract drafters<sup>8</sup> have violated almost all these core principles.

Among the drafting problems:

#### 1. TERMS ARE NOT USED CONSISTENTLY

The drafters introduce defined terms but then do not use those terms in subsequent references or introduce new terms in subsequent references.<sup>9</sup> For instance, “Commission” is a defined term and is used several times. But later in the document, this is referred to as “Sales Commission.” Similarly, “Real Estate Licensee” is defined early in the document. It later appears as a non-defined term (“real estate licensee”). And a different section spells out the actors who comprise “real estate licensees” rather than using the defined term. Using defined and non-defined terms consistently and appropriately is a basic contract drafting principle.<sup>10</sup>

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<sup>7</sup> The pagination and spacing in the Appendix is a little different than REBNY’s original document because the document needed to be converted from one file format to another.

<sup>8</sup> I am cognizant that these provisions are framed as a “checklist.” But they are written in the exact style of a contract and some brokerages will use the wording wholesale. I have seen contracts from one major brokerage that contains some of this exact REBNY verbiage.

<sup>9</sup> Georgetown Guide (“Check Definitions: Check the ‘Definitions’ Section or defined terms found throughout the contract to ensure (1) you have consistently used the same word as defined, (2) if you have not used any of the definitions or defined terms, delete them, and (3) you have capitalized defined words throughout the contract.”).

<sup>10</sup> Georgetown Guide (“Use Words Consistently: In non-legal writing, authors aim to vary their language to make for more interesting prose. Contract drafters, however, must avoid variation and inconsistency. Maintaining consistency is more important than avoiding repetition. • For example, if you refer to the subject matter of a sales contract as ‘goods,’ use the same term throughout the contract to refer to that subject matter instead of calling it ‘items’ or something different.”).

## 2. THERE ARE FAR TOO MANY DEFINED TERMS

I counted a total of twenty defined terms in this document. Several sentences almost have more words *with* capital letters than without. Consider, for instance, this section:

In the event a Seller offers compensation to the Buyer's Broker, Buyer's Broker will disclose to Buyer any compensation offered by the Seller to Buyer's Broker prior to preparing any offer on Buyer's behalf.

There are seven defined terms and twelve additional words with more than three letters (omitting words like "in" "to" and "on.").

And this section:

In the event that Buyer's Broker shows Buyer a Potential Property where Buyer's Broker is also representing the Seller of a Potential Property, a dual agency relationship arises (a "Dual Agency Property").

Again, there are seven defined terms and nine additional words with more than three letters.

Having this many defined terms confuses the reader, who must constantly (mentally or physically) keep track of what each word refers to.

## 3. GRAMMAR

There are myriad provisions in this document that are grammatically incorrect. For example:

"[This contract] creates an agency relationship with [sic.] Buyer's Broker and Buyer."

"Buyer's Broker will not give advice or render an opinion concerning zoning, building or health department, [sic.] fire or other regulatory matters affecting Potential Properties and/or improvements related thereto [sic.]"

"Buyer's Broker will not review any public records concerning Potential Properties, including but not limited to documents on file with the county, town or village in which Potential Properties are located and [sic.] federal, state or local court offices"

"Buyer hereby acknowledges that it is Buyer's sole responsibility to obtain such services and to retain any experts as per Buyer's sole election [sic.]"

“It is Buyer’s Broker’s policy to provide housing opportunities to all persons regardless of whether such person is a member of a protected class including, but not limited to, [sic.] age, citizenship, color, familial status, handicap, marital status, national origin, occupation, race, religion, sex or sexual orientation.”

And there are phrases and sentences that simply don’t make sense:

In the event Buyer, or any other person or entity acting on Buyer’s behalf, acquires, exchanges for, or obtains an option on a property . . . .

What does it mean for a buyer to “exchange for . . . a property”? Does it mean that a buyer trades his property for the seller’s property? If so, I am doubtful that this scenario happens on such a regular basis that it needs to be included in the provision.<sup>11</sup>

#### 4. RUN-ON SENTENCES

The document uses run-on sentences that no person would be able to follow:

Buyer acknowledges that if within \_\_\_\_ ( ) days of the termination of this Agreement (the “Protection Period”), Buyer, or any person or entity acting on Buyer’s behalf, exchanges for, obtains an option on, or leases a Potential Property shown to Buyer by Buyer’s Broker, whether done with or without the services of a licensed real estate Buyer’s Broker, associate Buyer’s Broker or real estate salesperson, and such Potential Property was shown to Buyer by Buyer’s Broker during the term of this Agreement (in accordance with a completed “List of Potential Properties Shown” in Exhibit A), Buyer’s Broker shall be entitled to the Sales Commission or Leasing Commission as set forth in this Agreement.

This section is 114 words.<sup>12</sup> Fifteen to twenty words is the typical length of a sentence.<sup>13</sup> Thirty words is considered long. The Georgetown Guide states:

Use Short Sentences: Shorter sentences often make a contract more readable. As a rule of thumb, if a sentence is longer than three lines, you should consider reworking it by either reformatting the provision into sub-sections or breaking it up into two or more sentences.

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<sup>11</sup> Moreover, exchanging your property for a seller’s property (if this is what the section means) would easily qualify as a purchase, with the consideration being provided in the form of real property.

<sup>12</sup> Using MS Word “Word Count” feature.

<sup>13</sup> <https://languagetool.org/insights/post/sentence-length/#:~:text=What%20Is%20the%20Ideal%20Length,spans%20and%20want%20rapid%20information.>

The provision above is ten lines,<sup>14</sup> more than triple Georgetown's three-line maximum.

## 5. EXTENSIVE LEGALESE

The REBNY document is replete with legalese (e.g., hereby, thereof, aforementioned, thereto, etc.). Research shows that people have trouble processing legalese in contracts:

2.1.1.2. Word frequency. Words that are infrequently used in everyday speech cause processing difficulties for readers relative to higher frequency synonyms. Legal texts are reportedly laden with "archaic words" such as aforesaid, herein, and to wit, which have been shown to be frequently misunderstood by laypeople.<sup>15</sup>

The legalese does not contribute anything of substance to the document.<sup>16</sup> All it does is confuse, and potentially intimidate, a reader.

## 6. PASSIVE VOICE

The drafters use far too much passive voice in the document. Sometimes this passive voice drafting makes the sentence barely understandable. For example, one provision reads: "Buyer hereby retains Buyer's Broker as Buyer's 'exclusive representative' to represent Buyer in the location and acquisition of a property . . .". Nobody would ever say that they will assist someone "in the location" of a property.

The Georgetown Guide explains why active voice is preferable in contract drafting:

Use the Active Voice and Keep the "Core" Together: Like litigation documents, contracts written in the active voice are generally easier to read. Because contracts obligate parties to act, the active voice is especially preferred. In using active voice, keeping the "core" of the sentence together is helpful. The "core" consists of the sentence's subject, verb, and object. Try to avoid creating a break between the subject and verb or between the verb and object with clauses and phrases.<sup>17</sup>

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<sup>14</sup> As formatted in 12-pt font and indented as a quote.

<sup>15</sup> <https://www.sciencedirect.com/science/article/pii/S0010027722000580?via%3Dihub> (citations omitted).

<sup>16</sup> Georgetown Guide ("Use Plain English: Do your best to avoid legalese and use Plain English in drafting a contract. Legalese adds clutter to a contract and makes provisions difficult to understand. Avoiding legalese makes the contract readable to all audiences, including the parties themselves and a judge who could interpret the document later on. • Incorrect - Legalese: 'Seller has not entered into any other contract or agreement to sell or encumber the Property or any part thereof.' • Correct - Plain English: 'Seller has not entered into any other contract or agreement to sell or encumber the Property or any of its parts.'").

<sup>17</sup> *Id.*

## 7. REDUNDANT LANGUAGE

There is a lot of redundancy in the document. For instance, the contract spells out the buyer's purchase "Parameters" (which consist of "Type" "Price Range" "Location" and "Description"). It then proceeds to say that the broker will "use diligence in identifying Potential Properties that meet the Parameters, as set by Buyer, such as (but not limited to) price and location;" It is not clear why the sentence does not stop at the word "Parameters." Instead, it uses a defined term ("Parameters") and then uses its components as an apparent modifier. Additional redundancies are flagged in the markup.

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I recently wrote two reports critiquing forms set to be released by the California Association of Realtors (CAR). These reports criticized both CAR's bad drafting and the substantive provisions of the contracts themselves.

CAR responded, in part:<sup>18</sup>

Nearly half the report consists of commentary on punctuation, capitalization, and the author's opinions on design, rather than substantive legal issues.

...

[The report] spends an inordinate amount of time examining grammar, formatting, and design . . .

This response blithely dismissed the importance of good contract drafting. Fixing spelling, punctuation, grammar, capitalization, and formatting is not being "nit-picky." It is the very essence of contract drafting. I hope REBNY does not take the position that CAR did and instead uses this critique to reconsider its "checklist" and improve it.

Every lawyer knows that bad contract drafting is just litigation waiting to happen. Why not prevent this possibility on the front end? And maybe even give the buyer something readable and intelligible to boot.

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<sup>18</sup> <https://www.car.org/aboutus/mediacenter/news/cfarlaresponse>; <https://www.car.org/aboutus/mediacenter/news/cfaresponse>.

APPENDIX



**BUYER'S BROKER AGREEMENT CHECKLIST**

TOPICS / SECTIONS	SUGGESTED LANGUAGE	Date Revised / Notes
Parties	_____ (“Buyer”) <del>hereby</del> retains _____ (“Buyer’s Broker;”), a licensed New York State <del>Real real Estate estate</del> <del>Brokerbroker</del> , represented by _____ (“Agent”) represent Buyer upon the <u>following</u> terms and conditions <del>set herein</del> .	<b>Commented [TM1]:</b> This is not a defined term that is used in the document. <b>Commented [TM2]:</b> Consistency in format of defined terms.
Term	This Agreement begins on _____ and <del>shall continue</del> until: (i) midnight on _____, 20____; <del>when it shall terminate by its terms unless extended in writing by the parties and in accordance with this Agreement</del> or (ii) upon a Closing if <del>Buyer</del> <u>purchases</u> property <del>is purchased</del> in accordance with Agreement.	<b>Commented [TM3]:</b> Redundant. If you have a set term, then it automatically expires and extension is up to the parties. <b>Commented [TM4]:</b> Active voice
Agency Relationship	This Agreement creates an agency relationship <del>with bet</del> Buyer’s Broker and Buyer. Buyer acknowledges receipt of the New York State Agency Disclosure Form.	<b>Commented [TM5]:</b> grammar
Representation (Exclusive)	Buyer <del>hereby</del> retains Buyer’s Broker as Buyer’s “ <del>exclusive</del> representative” to represent Buyer in <u>locating and acquiring</u> <del>location and acquisition of a property from the Seller of property</del> in accordance with the terms of this Agreement. <del>Accordingly</del> , Buyer shall work exclusively with Buyer’s Broker and shall not directly contact or work with any other real estate <del>broker</del> <u>Broker</u> , associate <del>broker</del> <u>Broker</u> or real estate salesperson (collectively “Real Estate Licensee”); with respect to locating and viewing properties (the “Potential Property” or “Potential Properties” <del>as the case may be</del> ) during the term of this Agreement. Buyer shall negotiate for Potential Properties exclusively through Buyer’s Broker and shall refer to Buyer’s Broker all inquiries <del>in any form</del> from any <del>other</del> Real Estate Licensee, prospective <del>seller</del> <u>Seller</u> or other source, <del>including Potential Properties located by Buyer</del> .	<b>Commented [TM6]:</b> No need for legalese <b>Commented [TM7]:</b> There is no reason this should be in quotations <b>Commented [TM8]:</b> Need consistency with how “Seller” is used. Sometimes it’s used generically, sometimes it is used to refer to *the* seller, sometimes it refers to potential sellers. Accordingly, it should not be a defined term.
Representation (Non-Exclusive)	Buyer <del>hereby</del> retains Buyer’s Broker as Buyer’s “ <del>non-exclusive</del> representative” to represent Buyer in <del>the location and acquisition of</del> <u>locating and acquiring</u> a property <del>from the Seller of property in</del> accordance with the terms of this Agreement. <del>Accordingly</del> , Buyer shall work on a non-exclusive basis	<b>Commented [TM9]:</b> <b>Commented [TM10R9]:</b> How could the buyer refer inquiries from the buyer? <b>Commented [TM11]:</b> Active voice.  Redundant language re “the Seller of such property.”

	Buyer's Broker with respect to locating and viewing properties (the "Potential Properties") during the term of this Agreement.	
Representation Regarding Existing Agreements (Exclusive)	Buyer represents that Buyer has not entered into any exclusive or non-exclusive buyer representation agreement that is currently in effect and Buyer agrees that it will not enter into any <del>exclusive</del> representation agreement with any other <del>Real estate Licensee</del> <u>Licensee</u> during the term of this Agreement.	<b>Commented [TM12]:</b> If this contract is exclusive, then the Buyer can't enter into any sort of other agreement, not just an exclusive agreement. <b>Commented [TM13]:</b> Consistency in defined terms.
Representation Regarding Existing Agreements (Non-Exclusive)	Buyer represents that Buyer has not entered into any exclusive or non- <del>exclusive</del> buyer representation agreement that is currently in effect.	<b>Commented [TM14]:</b> This doesn't make sense. The nature of a non-exclusive agreement is that you *can* enter into an agreement with other brokers.
Property Type	Buyer <del>desires-wishes</del> to purchase a property that meets the following parameters, <del>terms and conditions</del> (the "Parameters"): Type: Price Range: Location: Description:	<b>Why would the default be that the buyer has to "represent" that they have no other non-exclusive agreements when they are, in fact, permitted to have these agreements.</b> <b>Commented [TM15]:</b> These are not "terms and conditions"
Buyer's Broker's Duties	Buyer's Broker shall: (a) use diligence in identifying Potential Properties that meet the Parameters; <del>as set by Buyer, such as (but not limited to) price and location;</del> (b) assist Buyer in negotiating terms of an offer for Potential Properties at a price and on terms acceptable to Buyer; (c) arrange for showings of Potential Properties <del>that are suitable for Buyer;</del> and, (d) generally advise and assist Buyer throughout a <del>sale and purchase</del> <u>purchase and sale transaction</u> .	<b>Commented [TM16]:</b> You make an offer. You don't negotiate terms of the offer. <b>Commented [TM17]:</b> "Purchase and sale" is the more common terminology. See e.g. <a href="https://www.nvstatemls.com/documents/forms/NYStateMLS_Draft_Purchase_Contract.pdf">https://www.nvstatemls.com/documents/forms/NYStateMLS_Draft_Purchase_Contract.pdf</a>
Buyer's Broker's Fiduciary Duties	In carrying out the obligations of this Agreement, Buyer's Broker has the following fiduciary duties to Buyer: reasonable undivided loyalty, confidentiality, full disclosure, obedience and a duty to account. Buyer's Broker does not represent the interests of <del>a</del> <u>Seller</u> . However, in dealings with <del>a</del> <u>Sellerseller</u> , Buyer's Broker has an obligation to: (a) exercise reasonable skill and care in <u>the</u> performance of Buyer's Broker's duties; (b) deal <u>with the seller</u> honestly, fairly and in good faith; and (c) disclose all facts known to Buyer's Broker <u>that</u> materially affecting Buyer's ability and/or willingness to perform a contract to <del>acquire-purchase</del>	



	<p><del>Seller's a seller's</del> property <u>so long as the disclosure is that are is</u> not inconsistent with Buyer's Broker's fiduciary duties to Buyer.</p>	
<p>Buyer's Duties</p>	<p>During the term of this Agreement, Buyer shall: (a) provide to Buyer's Broker the <u>Parameters</u> and other terms and conditions upon which Buyer is seeking to acquire Potential Properties; (b) communicate with Buyer's Broker in a timely and truthful manner; (c) provide to Buyer's Broker relevant personal and financial information such that Buyer's Broker can evaluate Buyer's ability to finance and complete the <del>contemp</del> purchase of Potential Properties; and, (d) generally cooperate with Buyer's Broker with respect to the terms of this Agreement.</p>	<p><b>Commented [TM18]:</b> The defined term "parameters" includes what it labelled terms and conditions.</p> <p>There seems to be some confusion about:</p> <ol style="list-style-type: none"> <li>1. The characteristics of the property sought (e.g. type of property; location; price); and</li> <li>2. Terms and conditions governing the transaction (e.g. offers conditional on inspection, etc.).</li> </ol>
<p>Disclaimer</p>	<p>Buyer <del>hereby</del> acknowledges that Buyer's Broker is being retained solely as a real estate professional, <del>and not as a tax advisor, engineer, attorney, home inspector, architect, contractor or other professional service provider.</del> Buyer's Broker will not constitute an expert on matters relating to or provided by <del>such</del> service providers <u>such as [insert]</u>. Buyer's Broker will not give advice or render an opinion concerning zoning, <u>building or health department, fire</u> or other regulatory matters affecting Potential Properties and <u>improvements related thereto</u>. Buyer's Broker will not offer</p>	<p><b>Commented [TM19]:</b> It is strange to enumerate what a real estate broker is *not*. Logically, where does this list end? "Broker is not a landscaper, electrician, plumber, etc."</p> <p><b>Commented [TM20]:</b> The sentence does not grammatically hold together after the word "zoning"</p> <p><b>Commented [TM21]:</b> Grammatically incorrect.</p>
	<p>opinion <del>with regard to on</del> whether Potential Properties comply with laws, codes and regulations. Buyer's Broker will not review any public records concerning Potential Properties, including, but not limited to, documents on file with the county, town or village in which Potential Properties are located <u>and federal, state or local court offices</u>. Buyer's Broker has recommended to Buyer <u>that</u> Buyer seek the advice and counsel of qualified experts in connection with, but not limited to, the physical condition of Potential Properties and as to legal matters with respect to such Potential Properties. Buyer <del>hereby</del> acknowledges that it is Buyer's sole responsibility to obtain such services and to retain any</p>	<p><b>Commented [TM22]:</b> Grammatically incorrect</p>



	<p>experts <del>as per Buyer's sole election</del>. <del>Buyer's Broker shall have such duties as are set forth in this Agreement</del></p>	<p><b>Commented [TM23]:</b> grammar</p> <p><b>Commented [TM24]:</b> To the extent that this purports to abrogate common law or statutory duties, it is not enforceable.</p>
<p>Fair Housing</p>	<p>Buyer's Broker conducts business in accordance with all federal, state and local Fair Housing <del>Laws</del>laws. It is Buyer's Broker's policy to provide housing opportunities to all persons regardless of whether such person is a member of a protected class including but not limited to, age, citizenship, color, familial status, handicap, marital status, national origin, occupation, race, religion, sex or sexual orientation. Buyer <del>hereby</del> acknowledges receipt of the New York State Housing and Anti-Discrimination Disclosure Form.</p>	<p><b>Commented [TM25]:</b> The law prohibits discrimination; it is not an affirmative mandate to provide "housing opportunities to" people.</p> <p><b>Commented [TM26]:</b> grammar</p>



<p>Compensation / Commission</p>	<p>In the event Buyer, or any other person or entity acting on Buyer's behalf, acquires, <del>exchanges for</del>, or obtains an option on a pro (the "Purchased Property") during the term of this Agreement during the Protection Period, as hereinafter defined, Buyer's Broker shall be deemed to earn and will receive, at the time of <del>the = closing</del> <u>Closing of the Purchased Property</u>, a commission in the amount of \$ _____ or _____ (%) percent of the gross purchase price Buyer paid <del>Seller</del> <u>seller</u> for the Purchased Property (the "Commission"). <del>The Gross-gross</del> purchase price shall be equal to <u>the</u> total amount Buyer paid <del>s</del> <u>seller</u> for the Purchased Property including, but not limited to, <u>payment made for</u> a garage space, storage unit and/or a cabana.</p> <p>In the event a <u>s</u> <del>S</del> <u>seller</u> offers compensation to <del>the</del> Buyer's Broker, Buyer's Broker will disclose <u>that compensation</u> to Buyer <del>any compensation offered by the Seller to Buyer's Broker</del> prior to preparing any offer on Buyer's behalf. If the <u>s</u> <del>S</del> <u>seller</u>'s offer of compensation is equal to or greater than the Commission listed in this section, no compensation shall be due to Buyer's Broker from Buyer. <u>Buyer's Broker will not receive any amount from any source exceeding the Commission. If there is an excess, Buyer's Broker will negotiate for it to be allocated to Buyer.</u></p> <p>In the event the <del>commission</del> <u>compensation</u> offered to Buyer's Broker by the <del>Seller</del> <u>seller</u> is less than the <del>aforementioned percentage of the gross purchase price</del> <u>Commission</u>, Buyer agrees to compensate Buyer's Broker the difference between the <del>commission</del> <u>compensation</u> offered by the <del>Seller</del> <u>seller</u> and Buyer's Broker's <del>commission</del> <u>Commission</u>. <del>listed in this Agreement.</del></p>	<p><b>Commented [TM27]:</b> What does "exchanges for . . . a property" mean?</p> <p><b>Commented [TM28]:</b> grammar</p> <p><b>Commented [TM29]:</b> The crux of the settlement is that the Buyer's Agent cannot receive more than agreed to in this contract. If there is an excess, it not simply that "no compensation shall be due." It's also that the Broker will not earn this extra commission. And, to the extent possible, it should inure to the benefit of the buyer.</p> <p><b>Commented [TM30]:</b> Consistency in defined terms – compensation (not defined); Commission (defined)</p>
	<p>In the event <del>that</del> the Commission is not paid by <del>the Sellers</del> Buyer shall be responsible <del>to</del> <u>for</u> <del>paying</del> Buyer's Broker's Commission. The Commission will be due and payable to Buyer's Broker <del>when title or ownership passes to Buyer at the</del> <u>Closing</u>.</p>	<p><b>Commented [TM31]:</b> Redundant. "Commission" is a defined term.</p> <p><b>Commented [TM32]:</b> Consistency with paragraph above.</p> <p><b>Commented [TM33]:</b> Commission above is earned "at Closing". Why would there be a different section here?</p>



<p>Commission on Leasing of Property</p>	<p>In the event <del>that</del> Buyer, or any other person or entity acting on Buyer's behalf, leases a property (the "Leased Property") during the term of this Agreement, or during the Protection Period, as hereinafter defined, Buyer's Broker shall receive, <del>at the time of the signing of the lease</del> for the Leased Property, a commission in the amount of \$ _____ or _____ (____%) per year of the first year's rent of the Leased Property [and _____ (____%) for each <del>additional year's rental</del>] (the "Leasing Commission"). The Leasing Commission is due and payable to Buyer's Broker at the time of lease signing, <del>for the Leased Property.</del></p>	<p><b>Commented [TM34]:</b> Consistency.</p> <p><b>Commented [TM35]:</b> The lease might be subject to contingencies. For instance, it might not go into effect unless certain events happen. Is commission due in this case?</p> <p><b>Commented [TM36]:</b> Awkward drafting. Does this mean the initial lease was for a term greater than one year? Or, what if the lease has an option for renewal? I assume the former since the commission is due at signing, but the language is unclear.</p> <p><b>Commented [TM37]:</b> Not sure why the language refers to the "various parties." The point of the settlement was to have the buyer and his/her broker agree to compensation.</p>
<p>Compensation is Negotiable and Not Fixed</p>	<p>The amount or rate of compensation paid to <del>the</del> Buyer's Broker is not set or fixed by law. The compensation is fully negotiable and is set based upon negotiation by <del>the various parties to the transaction</del> Buyer and Buyer's Broker. Buyer's Broker shall receive compensation that exceeds the amount set forth in this Agreement.</p>	<p><b>Commented [TM37]:</b> Not sure why the language refers to the "various parties." The point of the settlement was to have the buyer and his/her broker agree to compensation.</p>
<p>Protection Period/Post Expiration Purchase</p>	<p>Buyer acknowledges that if within ____ ( ) days of the <del>termination</del> <del>expiration</del> of this Agreement (the "Protection Period"), Buyer, or any person or entity acting on Buyer's behalf, <del>exchanges for</del> obtains an option on, or leases a Potential Property shown to Buyer by Buyer's Broker, <del>whether done with or without the services of a licensed real estate Buyer's Broker, as shown to Buyer by Buyer's Broker or real estate salesperson</del>, and such Potential Property was shown to Buyer by Buyer's Broker during the term of this Agreement (in accordance with a completed "List of Potential Properties Shown" in Exhibit A), Buyer's Broker shall be entitled to the <del>Sales</del> Commission or Leasing Commission <del>set forth in this Agreement.</del></p>	<p><b>Commented [TM38]:</b> Termination implies that the buyer has ended the contract and there does not seem to be an option to do so. Alternatively, it might be expiration.</p> <p><b>Commented [TM39]:</b> Same comment</p> <p><b>Commented [TM40]:</b> Not a defined term here since you are not talking about the Buyer's Broker that is party to this agreement.</p> <p><b>Commented [TM41]:</b> This was defined earlier as "Real Estate Licensee"</p> <p><b>Commented [TM42]:</b> "Sales Commission" is not a defined term.</p>
<p>Dual Agency</p>	<p>Buyer acknowledges that Buyer's Broker also represents <del>Sellers</del> <del>sellers that are selling properties</del>. In the event <del>that</del> Buyer's Broker shows Buyer a Potential Property where Buyer's Broker is also representing the <del>s</del>Seller of a Potential Property, <del>the possibility of</del> a dual agency relationship arises (a "Dual Agency Property"). If Buyer does not wish to see a Dual Agency Property, Buyer shall <del>inform</del> <del>of such a decision</del> Buyer's Broker. If Buyer chooses to view a Dual Agency Property, Buyer hereby provides its <del>advanced</del> informed consent to dual agency <del>to Buyer's Broker</del>. Buyer acknowledges that when Buyer's Broker is acting as a dual agent, Buyer's Broker cannot provide undivided loyalty to either party, but Buyer's Broker has an obligation to maintain the</p>	<p><b>Commented [TM43]:</b> The defined term does not follow from the statement.</p> <p><b>Commented [TM44]:</b> Going to see a property where the Buyer's Agent is also the listing agent is NOT informed consent.</p>



	<p>confidences of each party and to treat each party honestly and fairly. If a dual</p>	
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	<p>agency relationship is created, Buyer's Broker will obtain acknowledgement and consent of Buyer and the <del>seller-sell</del> the dual agency relationship before proceeding with a transaction. Buyer also acknowledges that (i) Buyer may request that Buyer's Broker act as a <del>Dual-dual Agent</del>agent with <del>Designated design</del> <del>Sales-sales Agents</del>agents and (ii) in the event of a dual agency relationship, Buyer's Broker may collect a commission from the <del>Seller-s</del> Seller, as well as <del>an offer of compensation offered by the Seller to Buyer's Broker</del>the Commission.</p>	
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**Commented [TM45]:** This doesn't make sense. Do you mean, if a "dual agency situation arises"? If a dual agency relationship is created, you don't then obtain consent.

**Commented [TM46]:** Completely inconsistent with the provision above.

**Commented [TM47]:** Not defined.

**Commented [TM48]:** Has not been defined.

**Commented [TM49]:** This is not accurate. The Buyer's agent can collect the amount agreed to in the contract with the buyer, regardless of its source.

**Additionally, this contract is structured so there is no opportunity for a discounted dual agency.**



<p>Other Buyers</p>	<p>Buyer acknowledges that other potential buyers may consider, make offers on, or purchase <u>Potential Properties</u> through Buyer's Broker or agents of Buyer's Broker, <del>the same or similar Potential Properties as Buyer is seeking to purchase.</del> Buyer hereby con- to <del>Buyer's Broker's, and its agents, representation</del> <u>Buyer Broker and its agents representing</u> of such other potential buyers, <del>before, during and after the expiration of this Agreement.</del></p> <p>Buyer's Broker shall not, <del>however,</del> disclose to Buyer the details or terms of any other offer for the purchase of any Potential Property made on behalf of other buyers, nor shall Buyer's Broker disclose to other buyers the details or terms of any <del>other</del> offer made by Buyer <del>hereunder</del>.</p> <p>In the event that <del>the Agent</del> <u>Buyer's Broker</u> represents another buyer <u>who is interested in the same</u> <del>interested in a</del> Potential Property <del>that Buyer is interested in as</del> <u>Buyer, the Agent</u> <u>Buyer's Broker</u> must receive the consent of <del>the</del> Buyer and the other <del>interested</del> buyer before the <u>Agent</u> <u>Buyer's Broker</u> may make an offer on <u>such the</u> Potential Property.</p> <p>[<del>Should If the</del> Buyer or the other <del>potential</del> buyer not agree to have <u>Agent</u> <u>Buyer Broker</u> make the offer on the same Potential Property, either <del>the</del> Buyer or the other <del>potential</del> buyer ca- represented by another agent of the Buyer's Broker in conn- with making an offer on the <u>same</u> Potential Property].</p>	<p><b>Commented [TM50]:</b> grammar</p> <p><b>Commented [TM51]:</b> grammar</p> <p><b>Commented [TM52]:</b> Never seen a clause like this. Patently unfair.</p> <p><b>Commented [TM53]:</b> Inconsistency with "interested buyer" and "potential buyer"</p> <p><b>Commented [TM54]:</b> What if they don't want to be?</p>
<p>Modifications of Agreement</p>	<p>This Agreement cannot be <del>changed</del> <u>modified</u> or terminated o- Any changes <del>or additional provisions</del> must be set forth separate written agreement signed by all of the parties to this Agreement.</p>	<p><b>Commented [TM55]:</b> This implies it can be terminated. But there is no termination/cancellation provision.</p>
<p>Entire Agreement</p>	<p>All prior understandings and agreements between Buyer and Buyer's Broker are merged in this Agreement and this Agreement supersedes any and all understandings and agreements between the parties and constitutes the entire agreement between them with respect to the subject matter hereof.</p>	
<p>Governing Law</p>	<p>This Agreement will be governed by, and interpreted in accor- with, the laws of the State of New York.</p>	<p><b>Commented [TM56]:</b> Is this deliberately drafted restrictively? New York law interprets choice of law clauses narrowly. Contrast this with the forum selection clause.</p>
<p>Dispute Resolution – Court</p>	<p>Any claims, disputes, or other matters <del>in question between</del> <u>parties</u> arising <del>out of from</del> or relat- <u>ed</u> to this Agreement shall be settled</p>	



Proceedings	in a New York Court of competent jurisdiction in the county where <del>in</del> the Purchased Property is located or <u>where the</u> Buyer's Broker's office is maintained.	
Attorney's Fees	In any proceeding, action, <u>or arbitration</u> to enforce any provision of this Agreement, <del>or for damages caused by any default hereunder,</del> the prevailing party shall be entitled to reasonable attorney's fees, costs and related expenses, <del>including, but not limited to, expert witness fees. In the event Buyer's Broker hires an attorney to enforce the collection of any commission due hereunder and is successful in collecting all or any portion thereof with or without commencing a legal action or proceeding, Buyer agrees to pay the reasonable attorney's fees, costs and related expenses incurred by Buyer's Broker.</del>	<b>Commented [TM57]:</b> Any agreement to arbitrate, by definition, post-dates this agreement (since there is a forum selection clause). Matters related to arbitration, including attorneys' fees should be resolved in that agreement.
Parties to this Agreement	The parties acknowledge that and agree that REBNY and the REBNY Residential Listing Service (the "RLS") are not parties to this Agreement and Buyer's Broker has no authority to make any agreement, statement, representation or commitment on behalf of REBNY or the RLS.	<b>Commented [TM58]:</b> Duplicative
Miscellaneous Provisions	<del>The parties to this Agreement acknowledge that real estate Buyer's Broker commissions are fully negotiable and are not set by law nor by any organization.</del>	<b>Commented [TM59]:</b> Redundant. Parties are defined above.
Signatures	IN WITNESS WHEREOF, the parties intending to be legally bound have caused this Agreement to be signed as of the date set forth above.	<b>Commented [TM60]:</b> Duplicative.