



Gale Legal Group PLLC

382 Hercules Drive Suite 1, Colchester, VT 05446

P 802.876.7478 F 802.871.5742

www.galelegallgroup.com

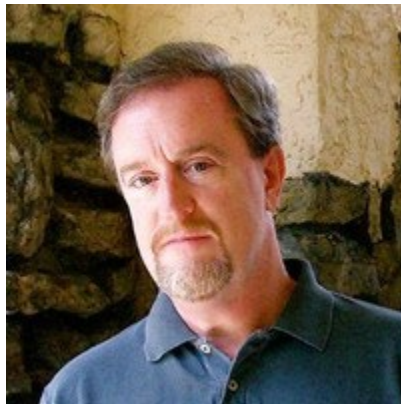
What the NAR Settlement Means for Vermont REALTORS®

Date: June 13, 2024

Location: New England Federal Credit Union Education Center, Williston, VT

THANK YOU TO OUR SPONSORS: Fidelity National Title Insurance Company; Gale Legal Group, PLLC and New England Federal Credit Union

Headline Speaker and Panelist



Charles C. Cain, Esq.

*Senior Vice President of National Agency,
Fidelity National Title Insurance Company*

Chuck Cain has been in the Title Insurance industry since 1977. He is a graduate of The Ohio State University and the Salmon P. Chase College of Law at Northern Kentucky University. He is admitted to practice in Ohio and Kentucky, several Federal District courts, and the U.S. Court of Appeals for the 6th Circuit. He is a past trustee of the Ohio Land Title Association and is a current member of the Government Affairs Committee of ALTA. He is former chair of the Real Property Section of the Cincinnati Bar Association, a former director of the Cincinnati Mortgage Bankers Association, a member of the Federal Reserve Bank of Cleveland's Fair Credit Task Force and a recipient of a special citation from the U.S. Department of Housing and Urban Development concerning Fair Housing Best Practices.

A native Cincinnatian, he has been a licensed title insurance agent for over 35 years, was an owner-operator of title agencies for 18 years and corporate officer with LandAmerica for over 10 years. He was EVP of Agency at WFG National Title for 10 years. He joined FNF as SVP in the Agency Division in August of 2020. He has spoken before many state land title associations, state and local bar associations, MBA, ABA, ALTA, NAR, RESPRO, the National Settlement Services Summit, The Realty Alliance, Leading Real Estate Companies of the World and numerous other groups and classes on the topics of title insurance and compliance. His many articles have been published in state land title publications, numerous mortgage and title industry trade journals and in October Research publications. Having worked in all areas of the title industry and with its customers he brings a great depth of knowledge of all aspects of the real estate industry.

PANELIST



David Raphael *Founder, Artisan Realty*

After over ten years in corporate information technology management, I made the transition into real estate in 2000. I brought extensive building and remodeling experience combined with my technology background to my passion for real estate. I serve my real estate community with pride and take our Realtor® code of ethics to heart, serving on our local and state professional standards boards and as a mediator and ombudsman. 2024 marks my nineteenth year in leadership with positions on our Multiple

Listing Service board (VREIN), our local Realtor® board and our state and national associations. I am currently the Vermont Association of Realtors Treasurer and a National Director for NAR. In 2013 I was awarded the prestigious Distinguished Service Award, recognized as a Realtor member who has gone above and beyond to serve my industry. In 2009 I was honored by the Northwest Vermont Realtor Association (NVRA) as their Realtor® Of The Year, an award that recognizes an individual for their leadership in their community and their unparalleled professionalism. In 2011, I served as President of NVRA and also graduated from the 2010-2011 National Association of Realtors® Leadership Academy. Vermont Governor Peter Shumlin appointed me in 2011 as a Commissioner on the Vermont Real Estate Commission where I served for eight years. In this role, I was actively involved at the international level with real estate regulators around the world through the Association of Real Estate License Law Officials (ARELLO). I served as the President of this organization in 2018 and was elected Member Emeritus in 2020. I continue to serve my profession as a Subject Matter Expert (SME) for two national real estate exam providers and one of the country's largest education providers. In this role I assist in the development of examination and education content.



PANELIST

Catherine Taylor, Esq
Attorney, Gale Legal Group, PLLC

Catherine is a graduate of Pace University and New England School of Law and is licensed to practice law in Vermont and Massachusetts. Prior to joining Gale Legal Group, she served as the Director of Education and Associate Counsel at the Massachusetts Association of REALTORS® for more than 6 years. There, she spearheaded the Association's educational programming, reviewed and revised the REALTOR® Forms Library, and provided

REALTORS® with answers to their legal questions. The skills and love for real estate Catherine developed in this role provide her with a broad range of expertise, allowing her to skillfully represent clients in a variety of real estate-related matters.

Panel Moderator:



Lisa Gale, Esq.
Founder, Gale Legal Group, PLLC

Lisa has been practicing law in Vermont for 30 years and has owned her firm for many years. Her reason for focusing on real estate law was to be able to offer the type of service that creates an ongoing relationship with her clients and the other affiliates and professionals in the real estate industry. She is a Board Member of the Northwest Vermont Realtor Association, as well as a member of the Vermont Mortgage Bankers Association and Vermont Builders and Remodelers Association. She is a frequent presenter and trainer at seminars offered through her office, NVRA, and VAR. Her focus is building a team with other professionals who share our high standards of professionalism and ethics.

REALTY IN FLUX:
THE NAR COMMISSION LAWSUIT
SETTLEMENT

Charles C. Cain, SVP National Agency





So how big is the industry?

- According to NAR membership the number for 2022 is about 1.6 million active real estate agents in the US with as many as 3m licensed agents. In 2012 there were about 1m active agents.
- The typical REALTOR is a 56 year old white female who attended college and is a homeowner.





What about brokerages?

- There are about 107,000 real estate brokerages in the US.
- Most are small with the median closing about 3 transactions per month.
- Typical real estate broker is a 49 year old white male who attended college and is a homeowner.





What the NAR lawsuits generally allege

- The Sitzer/Burnet lawsuit and the host of others allege that NAR, along with some real estate companies, violated federal antitrust law by conspiring to require home sellers to pay the broker representing the buyer and thus pay an inflated commission.
- Class in Sitzer/Burnet is sellers. 24 other such suits in federal courts and dozens more in state courts.





Cooperative Compensation Rule

- Mandatory rule of NAR that requires all listing brokers to make a blanket, non-negotiable offer of buyer broker compensation when listing a property on a Multiple Listing Service (MLS).
- In other words, in exchange for this access, NAR requires sellers who list on an MLS to also agree that the seller will pay a commission to the buyers' agent/broker.
- NAR argued that this offered commission could be \$0.





Proposed settlement agreement

- NAR and the other defendants have proposed settlement agreements.
- Anywhere, KW and Re/Max offers were approved by the court on May 3, 2024. The NAR settlement has been preliminarily approved with final approval expected in November. BHHS settlement offered made later has not yet been approved.
- Douglas Elliman, Realty One Group, AtWorld Properties, and The Real Brokerage also have submitted settlement agreements.





So how much?

- NAR has settled for \$418m payable over 4 years.
- Anywhere-\$83.5m
- Re/Max-\$55m
- KW-\$70m
- Home Services-\$250m
- Far less than the \$1.78b verdict which could become treble damages of almost \$5.4b.





Who does the NAR settlement apply to?

- NAR
- NAR members
- All state/territorial REALTOR associations
- All association-owned MLS'
- All brokerages with a NAR member as principal that had a residential transaction volume in 2022 of \$2b or below





What about \$2b and above?

- NAR settlement agreement creates a framework for such firms to opt-in to the settlement.
- Settlement would require depositing into escrow an amount equal to 0.0025 multiplied by its average annual “Total Transaction Volume” over the most recent 4 calendar years and to be bound by the terms of the settlement.
- Independent MLS’ can opt-in with payment being 100 multiplied by their 2023 subscribers.





Notable practice changes as a result of the settlement

- Cooperative Compensation Rule gone and prohibition that such offers be blanket, unconditional and unilateral.
- Prohibits making offers of compensation on the MLS to cooperating brokers or disclosing on the MLS listing broker compensation or total brokerage compensation.
- NAR implementation date 8/17/24.





Buyer agreements

- MLS participants working with a buyer **MUST** enter into a written agreement before the buyer **TOURS** a home with the following:
 - Specify and conspicuously disclose the amount or rate compensation received or how it is determined,
 - The amount must be objectively ascertainable. Can't be open-ended like “whatever the seller is offering”,
 - Can't be paid compensation for brokerage services from any source that exceeds the amount or rate agreed-to.





And more...

- Eliminate and prohibit any requirements conditioning participation in NAR MLS on using the Cooperative Compensation Rule.
- Agree not to create, facilitate or support any non-MLS mechanism for listing brokers or sellers to make offers of compensation to cooperating brokers.





And still more...

- Require NAR MLS participants acting for sellers to conspicuously disclose to sellers and obtain their approval for any payment or offer of payment made by listing broker or seller to buyers' broker.
- Require MLS participants to disclose to prospective buyers and sellers that broker commissions are not set by law and are negotiable.





But...

- Cooperative commission is NOT banned. Just can't offer it through the MLS.
- Seller concessions may still be offered through the MLS so long as such concessions are not limited to or conditioned on the use of or payment to a buyer broker.





Reactions by other players

- The GSEs will not count buyer agent costs in cap on seller concessions.
- VA has prohibited the veteran borrower from paying any real estate commission but they changed policy to allow it as of 6/11.
- FHA allows up to 6% of sales price in seller concessions. FHA will not count buyer agent costs in the cap.





Potential impact on title and settlement

- Will we see an expansion of dual agency (where allowed) where listing broker also represents buyer?
- Very common and allowable by law in some markets and not common in others.
- Where buyers' agent broker has been common source of business will that shift to listing?
- May occur in some markets and not in others.





Other impacts

- Relocation industry has historically generated revenue from being paid a portion of buyers' brokerage commission.
- Potential impact on home affordability.
- With reduction in number of real estate agents already occurring how many more agents will be gone? Some analysts say as much as 70% of present buyer agents within 2 years.





Boldly into the future

- US Judicial Panel on Multidistrict Litigation did NOT allow consolidation of Sitzer/Burnet settlement in 21 other pending federal cases in 9 federal districts. The show will go on.
- The US District Court for the DC Circuit has allowed DOJ to continue their own criminal investigation into the NAR/MLS alleged anti-trust activity. DOJ has advised they oppose commission offers being made “anywhere”.





So what's a title agent to do?

- Stay on top of your market as to market shifts from buyer agent/broker referrals to listing agent referrals especially in regard to dual agency. You may need to develop sales and marketing to target both.
- Read all real estate contracts provided carefully and ask questions.
- Expect greater demand for ABAs particularly with brokers that do high levels of buyer representation and expect consolidation of brokerages.



QUESTIONS?

Charles.Cain@fnf.com

513.543.4545

THANK YOU





P.O. Box 1284
Montpelier, VT 05602
(802) 229-0513
www.vermontrealtors.com

Understanding the National Association of Realtors® Settlement: What it Means for Home Buyers and Sellers in Vermont

Steven Foster, President
Vermont Association of Realtors®

On March 15, 2024, the National Association of Realtors® (NAR) announced a \$418 million settlement that would resolve litigation over claims in a national class action lawsuit brought on by home sellers related to broker's commissions. Much of the reporting surrounding this and what it means for the Vermont housing market has been inaccurate.

It's important to note that NAR does not set commissions or fees, and the proposed settlement would not change that. Realtors® professional service fees would continue to be negotiable among buyers, sellers, and their brokers. Sellers and buyers may decide to work with a Realtor® for many reasons, including helping to understand local market conditions, interpreting information found on the internet, negotiating the best price and terms, and navigating an often complex financing and closing process. Highly trained real estate professionals offer client advocacy and insights with required disclosures and regulations. They connect buyers and sellers with other reputable real estate-related professionals such as lawyers, lenders, contractors, and inspectors – any of which can make or break a transaction.

The commitment of Vermont Realtors® to their clients and the value they deliver have not wavered through market cycles and other industry changes. NAR's settlement is simply an attempt to increase communication and transparency in an ever-evolving real estate industry. The settlement would preserve consumers' choices regarding real estate services and compensation.

NAR and the Vermont Association of Realtors® (VAR) have long encouraged their members to use written representation agreements because these help consumers understand exactly what services and value will be provided and at what cost. While this practice has not been universally adopted across the US, we are proud to say that it has been in place in Vermont for many decades. Compensation will continue to be negotiable and should always be negotiated between real estate brokerages and the consumers they serve.

Many news stories focus on how the proposed changes in the settlement will make homes more affordable. This perspective fails to consider the most basic tenet of economics: supply and demand. The increase in home prices can be attributed to interest rates, inflation, and the lack of inventory. Vermont currently has a 6,800-unit housing shortage. Naturally, when few properties are available, the high demand from buyers causes prices to rise.

Ultimately, consumers will continue to be able to choose the real estate professional they want to work with and, through a written agreement, determine how much and how they will pay for that expertise, value, and guidance. NAR's proposed settlement and the associated practice changes will not change what makes Realtors® incredibly valuable: specialized knowledge, diligence, advocacy, and fiduciary responsibility to their buyer and seller clients.

###

Steven Foster, president of the Vermont Association of Realtors®, is a broker-owner at Hickey and Foster Real Estate at KW Vermont.

The Vermont Association of Realtors® is a statewide association of over 2,000 real estate practitioners across Vermont.

NAR SETTLEMENT FAQs

Last Updated: May 31, 2024

TABLE OF CONTENTS

NAR SETTLEMENT FAQs.....	1
SETTLEMENT OVERVIEW AND KEY TERMS	2
WHO IS COVERED.....	4
PRACTICE CHANGES & MLS INFORMATION.....	7
EFFECTIVE DATE CHANGE	8
OFFERS OF COMPENSATION	9
STEERING	12
WRITTEN LISTING AGREEMENTS	13
WRITTEN BUYER AGREEMENTS	14
CONCESSIONS.....	17
NON-FILTERING OF LISTINGS	18
COMMERCIAL NON-RESIDENTIAL LISTINGS	19
IMPACT	20
NAR OPERATIONS.....	20

Note: New or revised FAQs are noted with the date added or updated.

SETTLEMENT OVERVIEW AND KEY TERMS

1. Why did NAR enter into this settlement?

- From the beginning of this litigation, we had two goals:
 - Secure a release of liability for as many of our members, associations, and MLSs as we could; and
 - Preserve the choices consumers have regarding real estate services and compensation.
- This proposed settlement achieves both of those goals and provides a path for us to move forward and continue our work to preserve, protect, and advance the right to real property for all.

2. What are the key terms of the agreement?

- **Release of liability:** The agreement would release NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all REALTOR® MLSs, and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
 - NAR fought to include all members in the release and was able to ensure more than one million members are included.
 - Despite NAR's efforts, agents affiliated with HomeServices of America and its related companies—the last corporate defendant still litigating the Sitzer-Burnett case—are not released under the settlement, nor are employees of the remaining corporate defendants named in the cases covered by this settlement.
 - The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it. Individual members and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below are released by the agreement and not required to opt in.
- **Compensation offers moved off-MLS:** NAR has agreed to put in place a new rule prohibiting offers of compensation on an MLS. Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions for buyer closing costs). This change will go into effect August 17, 2024.
- **Written agreements for MLS Participants acting for buyers:** While NAR has been advocating for the use of written agreements for years, in this settlement we have agreed to require MLS Participants working with buyers to enter into written agreements with their buyers before touring a home. This change will go into effect August 17, 2024.
- **Settlement payment:** NAR would pay \$418 million over approximately four years. This is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission. NAR will not change membership dues for 2024 or 2025 because of this payment.
- **NAR continues to deny any wrongdoing:** NAR has long maintained—and we continue to believe—that cooperative compensation and NAR's current policies are good things that benefit buyers and sellers. They promote access to property ownership, particularly for lower-

and middle-income buyers who can have a difficult-enough time saving for a down payment. With this settlement, NAR is confident it and its members can still achieve all those goals.

3. Does this settlement mean that NAR is admitting that plaintiffs' allegations are true?

- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule).
- It has always been NAR's goal to resolve this litigation in a way that preserves consumer choice and protects our members to the greatest extent possible. This settlement achieves both of those goals.
- This agreement significantly reduces liability nationwide for over one million NAR members, all state/territorial and local REALTOR® associations, REALTOR® MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. Ultimately, continuing to litigate would have hurt members and their small businesses.
- The agreement provides a path forward for our industry and NAR.

4. By changing the cooperative compensation policy, aren't you admitting that it was problematic?

- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule).
- NAR has long maintained—and we continue to believe—that cooperative compensation and NAR's current policies are good things that benefit buyers and sellers. They promote access to real property ownership, particularly for lower- and middle-income buyers who can have a difficult-enough time saving for a down payment. Real estate laws in many states authorize offers of compensation.
- With this settlement, NAR is confident it and its members can still achieve all those goals.

5. What were the key factors that influenced NAR's decision to choose the legal path it did for the settlement?

- NAR explored settling throughout the litigation and carefully considered all legal options. These included:
 - **Appealing:** A win on appeal would only have addressed the verdict in the Sitzer-Burnett case (not any of the copycat cases) and may only have resulted in a new jury trial, leaving members and consumers with continued uncertainty.
 - **Chapter 11 reorganization:** In theory, Chapter 11 would have enabled NAR to eliminate its own liabilities while pursuing an appeal of the Sitzer-Burnett verdict. But we believe that would have left members with continued uncertainty and potential liability risk. Chapter 11 would also have paused the litigation against NAR but not the other defendants in the cooperative compensation cases.
- Ultimately, while NAR continues to believe that it is not liable for the home seller claims related to broker commissions and that we have strong arguments challenging the Sitzer-Burnett verdict, we decided to reach this settlement to put claims to rest for over one million NAR members and other parties who would be released under the agreement.

6. How quickly do you expect the settlement to be reviewed and/or approved by the court?

- The court granted preliminary approval on April 24, 2024.
- The practice changes set forth in the settlement agreement will take effect August 17, 2024, and class notice will take place no earlier than that date.

- The settlement is subject to final court approval. The final approval hearing is scheduled to take place on November 26, 2024.
- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.

WHO IS COVERED

7. How do I know if I'm covered by the settlement?

- If you are an NAR member as of the date of the class notice, you are covered by the settlement unless you are an employee of a remaining defendant (at the time of the settlement) in the *Gibson/Umpa* litigations (many of which have announced their own settlements) or you are associated with HomeServices of America or one of its affiliates. HomeServices of America announced its own settlement on April 26, 2024.
- Class notice will be sent out no earlier than August 17, 2024.
- Individual NAR members and their brokerages with 2022 total transaction volume for residential home sales below \$2 billion do not need to take any action to be covered by the settlement. *(Updated 5/29/2024)*

8. Will I be covered by the settlement if I only became a member shortly before the date of class notice? Or, alternatively, dropped my membership shortly before the date of class notice?

- To be covered by the settlement, you must be an NAR member as of the date of class notice.
- You will not be covered by the settlement—regardless of prior membership length—if you resign your membership, if your membership is terminated, or if your membership becomes inactive prior to the date of class notice.
- Class notice will be sent out no earlier than August 17, 2024.

9. Brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2+ billion are not covered by the release. What about members affiliated with those brokerages?

- Except for members affiliated with HomeServices of America and employees of the remaining corporate defendants named in the cases covered by this settlement, members affiliated with brokerages with an NAR member as principal whose transaction volume in 2022 was \$2+ billion are covered by the release.
- Individual members and all brokerages with an NAR member as principal with a residential transaction volume in 2022 of \$2 billion or below are released from liability in the proposed settlement agreement. No further affirmative steps are required.

10. How does the settlement affect corporate brokerages and any brokerages that are carved out from the release?

- The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.
- While we would have preferred to protect all industry players, ultimately NAR could not persuade the plaintiffs to include the largest brokerages, particularly given the significant settlements that other corporate defendants have already reached.

- Individual members and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below are released from liability in the proposed settlement agreement. No further affirmative steps are required.

11. Why does the release of liability carve out some co-defendants and some of their affiliated agents?

- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- Despite NAR’s efforts, agents affiliated with HomeServices of America and its related companies—the last corporate defendant still litigating the Sitzer-Burnett case—are not released under the settlement, nor are employees of the remaining corporate defendants named in the cases covered by this settlement. HomeServices of America announced its own settlement on April 26, 2024.
- Plaintiffs would not agree to include these members and employees of the corporate defendants in the NAR’s release.
- NAR secured in the agreement a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion, and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.

12. How does the settlement affect state/territorial and local associations?

- State/territorial and local associations do not need to opt-in to the settlement agreement. The agreement would release all state/territorial and local REALTOR® associations from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
- State/territorial and local associations are required to comply with the practice changes agreed to in the settlement. *(Updated 5/29/2024)*

13. Are institutes, societies, and councils affiliated with NAR included in the release in the settlement agreement?

- Yes.

14. Does the fact that the release does not cover everybody mean that NAR has left large corporate brokerages and affiliated agents to fend for themselves?

- Absolutely not. NAR fought to include as many people and companies in the release as possible and achieved a release for everyone it could. Over one million members are covered, as are tens of thousands of REALTOR® businesses.
- The scope of the release makes clear that NAR looked out for its members. Ultimately, NAR was able to ensure that agents, even those at brokerages that are not covered, are among the more than one million members released.
- Despite NAR’s efforts, plaintiffs would not agree to include everybody.
- Those that are not released—the largest companies in our industry—are no worse off now than they were before the settlement.
- In fact, many are better off, as thousands of their independent contractor real estate agents are released by the settlement.
- However, they can choose whether to use the mechanism NAR negotiated.

- Our options included reaching a settlement or continuing to appeal the Sitzer-Burnett verdict and litigate the related cases. The latter could have led to our filing for Chapter 11 protection, leaving all members, associations, MLSs, and brokerages exposed.

15. What is required for brokerages with residential transaction volume in 2022 that exceeded \$2 billion to obtain releases?

- NAR secured in the agreement a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion to obtain releases efficiently if they choose to use it. However, the remaining defendants in the actions covered by the Agreement cannot use the opt-in mechanism.
- Broadly speaking, the opt-in provides two paths:
 - **Option 1:** A brokerage can elect to pay an amount based on a predetermined formula based on that brokerage’s residential transaction volume.
 - **Option 2:** A brokerage can elect to participate in non-binding mediation within 110 days following preliminary approval of the settlement.
 - Brokerages can also choose not to participate in this settlement.
- In order to be released under the settlement, eligible brokerages must agree to and execute Appendix C – Brokerage “Opt In” Agreement and return it—along with the required documentation and indication noted in paragraph 20 of Appendix C—to the email addresses realtorsoptin@jndla.com, realtorsoptin@cohenmilstein.com, and nargovernance@nar.realtor within 60 days of the filing of the motion for preliminary approval (by June 18, 2024).
- All agreements reached through this mechanism would be subject to court approval.

16. What is required for non-REALTOR® MLSs to obtain releases?

- For MLSs that are not wholly owned by a REALTOR® association, the agreement includes a mechanism to obtain a release efficiently if they so choose.
- The agreement provides two paths:
 - **Option 1:** An MLS can elect to pay an amount based on a pre-determined formula based on number of MLS subscribers.
 - **Option 2:** An MLS can elect to participate in non-binding mediation within 110 days following preliminary approval of the settlement.
 - **Non-REALTOR® MLSs** can also choose not to participate in this settlement.
- Under both options, participating non-REALTOR® MLSs would agree to be bound by the practice changes set forth in the settlement agreement, including and not limited to the adoption of a rule prohibiting offers of compensation on that MLS.
- Non-REALTOR® MLSs must:
 - Execute Appendix D—Non-REALTOR® MLS “Opt In” Agreement—by June 18, 2024, which is 60 days from the filing of the Motion for Preliminary Approval.
 - Return the executed Agreement—along with the required indication noted in paragraph 20 of Appendix D—to the email addresses realtorsoptin@jndla.com, realtorsoptin@cohenmilstein.com, and nargovernance@nar.realtor
 - Choose between the options to either pay a per-subscriber fee to the Settlement Fund or pay an amount agreed to in a non-binding mediation.
 - NAR recommends implementing practice changes by August 17, 2024. In any event, those opting in must implement practice changes no later than September 16, 2024,

which is 150 days from the filing of the Motion for Preliminary Approval, to be a Released Party under the settlement.

- NAR recommends all MLSs opting into the settlement implement the practice changes by August 17, 2024.

17. What is required for REALTOR® MLSs to obtain releases?

- REALTOR® MLSs must:
 - Execute Appendix B by June 18, 2024, which is 60 days from the filing of the motion for preliminary approval.
 - Return the executed REALTOR® MLS “Opt In” Agreement Appendix B to the email addresses realtorsoptin@jndla.com, realtorsoptin@cohenmilstein.com, and nargovernance@nar.realtor
 - Implement the practice changes by August 17, 2024, to be in compliance with mandatory NAR policy.

18. What happens if a non-REALTOR® MLS doesn’t opt-in to the proposed settlement agreement?

- An MLS would not be covered by the release of the proposed settlement agreement.

PRACTICE CHANGES & MLS INFORMATION

19. What MLS policies have changed?

- The policy changes, agreed to by NAR leadership, were reviewed and updated with the changes as outlined below:
 - Eliminate and prohibit any requirement of offers of compensation on an MLS between listing brokers or sellers to buyer brokers or other buyer representatives.
 - Retain, and define, "cooperation" for MLS Participation.
 - Eliminate and prohibit MLS Participants, Subscribers, and sellers from making any offers of compensation on an MLS to buyer brokers or other buyer representatives.
 - Require an MLS to eliminate all broker compensation fields and compensation information on an MLS.
 - Require an MLS to not create, facilitate, or support any non-MLS mechanism (including by providing listing information to an internet aggregator’s website for such purpose) for Participants, Subscribers, or sellers to make offers of compensation to buyer brokers or other buyer representatives.
 - Prohibit the use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers or other buyer representatives. Such use must result with an MLS terminating the Participant’s access to any MLS data and data feeds.
 - Reinforce that MLS Participants and Subscribers must not, and MLSs must not enable the ability to filter out or restrict MLS listings that are communicated to customers or clients based on the existence or level of compensation offered to the cooperating broker or the name of a brokerage or agent.
 - Require compensation disclosures to sellers, and prospective sellers and buyers.
 - Require MLS Participants working with a buyer to enter into a written agreement with the buyer prior to touring a home.

20. What is the value of an MLS?

- MLSs have always provided significant value beyond communicating offers of compensation.
- MLSs:
 - Enable comprehensive marketplaces: Access to inventory and widespread advertising incentivizes local broker participation.
 - Ensure reliable data access: NAR guidelines for local MLS broker marketplaces enable hubs of trusted, verified information where all participants have equitable access.
 - Create connections: Local MLS broker marketplaces create the largest opportunity for connections between real estate agents with properties to sell and those with clients looking to buy.
 - Advance small business: Compiling housing information that is accessible to all businesses, in one place, allows smaller real estate brokerages to compete with larger ones.
 - Encourage entrepreneurship: Because of lower barriers to entry enabled by local MLS broker marketplaces, new market entrants can advance technology, consumer service and other innovations.

21. How has the definition of an MLS Participant been changed?

- The definition has been amended to remove any references to offers of compensation and to establish that a Participant has the duty to cooperate, which is to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients.

22. Are all other MLS policies that were not amended still in effect?

- Yes, all MLS policies will continue to be in effect and subject to enforcement by their local MLSs.

EFFECTIVE DATE CHANGE

23. When will the practice changes take effect?

- NAR's mandatory MLS policy changes, which implement the settlement's required practice changes, will take effect on August 17, 2024.
- Our settlement requires NAR to implement the practice changes no later than the date of class notice. Through the preliminary settlement approval process, we now know the earliest date of class notice is August 17, 2024.
- Additionally, to comply with NAR's mandatory national MLS policies, REALTOR® MLSs must implement the practice changes by August 17.
- NAR shared these practice changes in early May to provide a three-month window for NAR members and MLSs to prepare to implement these changes.

24. NAR originally planned for the practice changes to take effect in "late July." Why the change?

- Our settlement requires NAR to implement the practice changes no later than the date of the class notice. Through the preliminary settlement approval process, we no longer have to estimate the date of the rule change, and now know the earliest date of the class notice is August 17, 2024.

25. The opt-in agreements in the appendices indicate that MLSs that opt in to the NAR settlement have until September 16, 2024, to implement changes. Should MLSs also implement the practice changes by August 17, 2024?

- MLSs that have opted into the settlement agreement have until September 16, 2024, to implement the necessary policy changes and to be considered Released Parties under the settlement, as provided in the relevant appendices they executed. However, in accordance with mandatory NAR policy, REALTOR® MLSs must implement the practice changes by August 17, 2024. If they do not, they will not be in compliance with NAR mandatory policy. NAR recommends all MLSs opting into the settlement implement the practice changes by August 17, 2024. NAR's accelerated rule change process, during which it released the exact language of the practice changes in early May, gives MLSs over three months to implement the changes by August 17, 2024.

26. Why is NAR putting the practice changes in place prior to receiving final approval?

- Our settlement requires NAR to implement the practice changes no later than the date of the class notice. Through the preliminary settlement approval process, we no longer have to estimate the date of the rule change, and now know the earliest date of the class notice is August 17, 2024.

OFFERS OF COMPENSATION

27. Why was prohibiting the publication of compensation offers on an MLS part of the settlement?

- While NAR has long maintained—and we continue to believe—that cooperative compensation and NAR's current policies are good things that benefit buyers and sellers, we also acknowledge that continuing to litigate would have hurt members and their small businesses, so have agreed to put in place a new rule prohibiting offers of compensation on an MLS.
- This is consistent with NAR's long-maintained position that prohibiting all offers of cooperative compensation entirely would harm consumers and be inconsistent with real estate laws in the many states that authorize them.
- We believe this agreement provides a path forward for our industry and NAR.

28. Does this mean buyers won't have to use a buyer broker to purchase a property?

- As always, the consumer chooses whether to use a real estate professional. Research has confirmed that consumers find great value in the services provided by a buyer broker, and we continue to believe it is imperative for buyer brokers to clearly articulate what services and value they are providing to consumers.

29. Does this mean buyer brokers may have to work for free?

- No. We have long believed that it is in the interest of the sellers, buyers, and their brokers to make offers of compensation—but using an MLS to communicate offers of compensation will no longer be an option.
- The types of compensation available for buyer brokers would continue to take multiple forms, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing broker's compensation

- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they represent

30. How will buyer brokers get paid now?

- Offers of compensation will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals.
- The types of compensation available for buyer brokers would continue to take multiple forms, depending on broker-consumer negotiations, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing broker's compensation
 - Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

31. Does this prohibition affect the compensation amount paid to the listing broker?

- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they represent.

32. What should listing brokers advise their clients about the prohibition of offers of compensation on an MLS?

- Listing brokers should inform their clients that offers of compensation will no longer be an option on an MLS.
- This change will not prevent offers of cooperative compensation off-MLS. And it will not prevent sellers from offering buyer concessions on an MLS (ex. concessions for buyer closing costs).
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

33. Does this prohibition affect the compensation amount paid to the listing broker?

- No. Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they represent, as NAR's policy has required for decades.

34. How will offers of compensation be communicated if brokers can't use MLSs? Doesn't this just make broker compensation less transparent?

- Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions that can be used for buyer closing costs).
- The settlement does not change the ethical duties that NAR members owe their clients.
- REALTORS® are always required to protect and promote the interests of their clients and treat all parties in a transaction, honestly (Article 1, COE).
- NAR members will continue to use their skill, care, and diligence to protect the interests of their clients.
- NAR remains dedicated to promoting transparency in the marketplace and working to ensure that consumers have access to comprehensive, equitable, transparent, and reliable property information, as well as the ability to have affordable professional representation in their real

estate transactions.

35. Won't prohibiting offers of compensation on an MLS raise fair housing issues?

- This settlement allows compensation to remain a choice for consumers when buying or selling a home.
- NAR continues to believe that offers of compensation help make professional representation more accessible, decrease costs for home buyers to secure these services, increase fair housing opportunities, and increase the potential buyer pool for sellers.
- The settlement does not change the ethical duties that NAR members owe their clients.
- REALTORS® are always required to protect and promote the interests of their clients and treat all parties in a transaction honestly (Article 1, COE).
- NAR members will continue to use their skill, care, and diligence to protect the interests of their clients.

36. Can buyers and buyer brokers rely on an offer of compensation that was on an MLS prior to the effective date of the MLS policy changes?

- If the sales contract is executed before the MLS policy change, the buyer broker should be able to rely upon the offer of compensation even if closing occurs after the date of the policy change.
- But if a sales contract is not executed before the date the participant's MLS implements the policy changes, the offer on an MLS will not be valid and buyers and buyer brokers may wish to protect themselves in writing with the listing broker or seller through a broker agreement or by including the offer of compensation in the sales contract.

37. Are non-REALTOR® MLSs affected by the prohibition of publishing compensation offers on an MLS?

- Only if they choose to opt into the proposed settlement.

38. If the seller or the listing broker offers a bonus or financial incentive in addition to the offer of broker compensation, can the buyer broker accept the extra compensation?

- The buyer broker may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

39. Does Standard of Practice 16-16 prohibit the negotiation of buyer broker compensation in a buyer's purchase offer?

- No. A buyer can always ask their buyer broker to make it a term of an offer to purchase that the seller pay certain compensation to the buyer broker.
- Standard of Practice 16-16 prohibits a REALTOR® from attempting to modify the terms of a listing agreement through the terms of an offer because the listing agreement is a contractual matter between the seller and the listing broker. However, the seller and the listing broker may independently choose to amend the listing agreement or take any other action they deem appropriate based on the seller's negotiations with the buyer. Standard of Practice 16-16 also prohibits a REALTOR® from delaying or withholding delivery of a buyer's offer while attempting to negotiate a buyer broker compensation.

40. Can a buyer request the listing broker to pay compensation to the buyer broker?

- Yes.

41. Can an MLS have a Yes/No Compensation Field?

- No. The new MLS policies prohibits any information about compensation on an MLS.

42. Can a listing broker communicate offers of compensation on a broker website which has an IDX or VOW feed?

- Yes, MLS Participants may augment MLS data or data feeds with offers of compensation to buyer brokers or other buyer representatives for only listings of their own brokerage.

43. Can an MLS Participant use or share their MLS data or data feeds to establish or maintain a platform for offers of compensation from multiple brokers and buyer brokers or other buyer representatives?

- No, use of MLS data or data feeds to directly or indirectly establish or maintain a platform of offers of compensation from multiple brokers to buyer brokers or other buyer representatives is prohibited.

44. Can an MLS allow MLS listings to link to a listing broker's contact information (e.g., telephone number, broker's preferred communication method)?

- Yes.

45. Can disputes about an offer of compensation still be arbitrated or mediated?

- Yes, REALTORS® are bound to arbitrate or mediate pursuant to Article 17 of the Code of Ethics, and for MLS Participants who are non-REALTORS® they are bound to arbitrate or mediate pursuant to their MLS's local rules.

STEERING

46. What is NAR's policy on steering buyers based on the amount of broker compensation?

- Under NAR's Code of Ethics, steering buyers based on the amount of broker compensation is prohibited.
- REALTORS® MUST pledge themselves to protect and promote the interests of their client, putting their client's best interests before their own. A REALTOR® must never put broker compensation before their client's interests.
- REALTORS® MUST be honest and truthful in their real estate communications and MUST NOT exaggerate, misrepresent, or conceal pertinent facts relating to the transaction, including facts about broker commissions.
- If a REALTOR® does anything to put their own (or another broker's) compensation before her client's interests, they are violating this primary code of ethics and potentially violating the broker's fiduciary duties to their client (depending on the broker-buyer relationship and state law). *(Added 5/29/2024)*

47. Does NAR's settlement address the theoretical possibility of steering?

- Yes. In the agreement, NAR reaffirms its commitment to requiring that MLS Participants must not limit the listings their client sees because of broker compensation.

- Written buyer agreements, required by the NAR practice changes that will be implemented on August 17, 2024, will also outline that MLS Participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.
- Since a broker working with a buyer cannot receive more compensation than the buyer has agreed to in that agreement, the amount of any offer of compensation is irrelevant to the buyer-broker's compensation.
- Under these practice changes, NAR has eliminated any theoretical steering because a broker will not make more compensation by steering a buyer to a particular listing because it has a "higher" offer of compensation. *(Added 5/29/2024)*

48. Can a broker tell a potential buyer the amount of broker commissions and explain who is paying those commissions?

- Yes. In fact, REALTORS® must provide this information to potential buyers under NAR's Code of Ethics.
- The NAR Settlement also requires that "to the extent that such a REALTOR® or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined." *(Added 5/29/2024)*

49. Can a listing broker explain to a seller that the buyer will know who is paying the commissions?

- Yes, Articles 2 and 12 of NAR's Code of Ethics apply equally to brokers working with sellers.
- The listing broker should explain to her client the benefits and costs of the various types of marketing that can be done for a listing, and how potential buyers might respond to such marketing—including any buyer costs that the listing broker or seller may offer to pay.
- A listing broker should inform the seller about costs the buyer will incur, how the buyer might react to those costs, and how the seller can market a house considering the buyer's costs; but a listing broker must not tell a seller that a broker will steer buyers based on the amount that broker is compensated. *(Added 5/29/2024)*

WRITTEN LISTING AGREEMENTS

50. What additional provisions must be included in written listing agreements because of the practice changes?

- MLS Participants working with sellers must disclose in conspicuous language that broker commissions are not set by law and are fully negotiable.
- MLS Participants must include the disclosure in the listing agreement, if the listing agreement is not a government-specified form. If the listing agreement is a government-specified form, a separate disclosure would satisfy the requirement. *(Added 5/29/2024)*

51. Must a REALTOR® or MLS Participant acting for a seller obtain prior approval from the seller before an offer of compensation is made or compensation is paid to another broker, agent, or other representative acting for a buyer?

- Yes. The practice changes require that a REALTOR® or MLS Participant acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of

payment that a listing broker will make to another broker, agent, or other representative acting for buyers.

- The disclosure must be made to the seller in writing in advance of any payment or agreement to pay another broker, agent, or other representative acting for buyers and must specify the amount or rate of such payment. *(Added 5/29/2024)*

52. Should active listing or buyer agreements—meaning there is no accepted offer—entered into before the MLS policy changes go into effect on August 17, 2024 be amended to include a conspicuous disclosure that compensation is not set by law and is fully negotiable?

- MLS Participants must make this disclosure. Active agreements can either be amended or a separate disclosure can be provided to satisfy the requirement. *(Updated 5/29/24)*

53. Should active listing agreements entered into before the MLS policy changes go into effect on August 17, 2024 be amended to address the settlement agreement’s prohibition on offers of compensation being communicated on an MLS?

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to an MLS, no change to the listing agreement is needed, as the listing broker can comply with that instruction without violating the MLS policy change.
- But if the listing agreement specifies that offers of compensation be made on an MLS then the listing broker should work with the seller to amend the listing agreement before the MLS policy change is implemented, to make it clear the listing broker will not make an offer of compensation on an MLS and to determine whether the seller instructs the listing broker to make an offer of compensation outside of an MLS. *(Updated 5/29/24)*

WRITTEN BUYER AGREEMENTS

54. What provisions must be included in written buyer agreements?

- The written agreement must include:
 1. A specific and conspicuous disclosure of the amount or rate of compensation the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source.
 2. The amount of compensation in a manner that is objectively ascertainable and not open-ended.
 3. A term that prohibits the Participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
 4. A conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

55. Who will be responsible for enforcing the written agreements and ensuring all parties follow this new practice change?

- MLSs will be responsible for enforcing the rule regarding written agreements, like MLSs enforce other existing rules.

56. The practice change requiring written agreements with buyers is triggered by two conditions: it only applies to MLS Participants “working with” buyers and is triggered by “touring a home.” What does it mean to be “working with” a buyer?

- The “working with” language is intended to distinguish MLS Participants who provide brokerage services to a buyer—such as identifying potential properties, arranging for the buyer to tour a property, performing or facilitating negotiations on behalf of the buyer, presenting offers by the buyer, or other services for the buyer—from MLS Participants who simply market their services or just talk to a buyer—like at an open house or by providing an unrepresented buyer access to a house they have listed.
- If the MLS Participant is working only as an agent or subagent of the seller, then the participant is not “working with the buyer.” In that scenario, an agreement is not required because the participant is performing work for the seller and not the buyer.
- Authorized dual agents, on the other hand, work with the buyer (and the seller).

57. What does it mean to tour a home?

- Written buyer agreements are required before a buyer tours a home.
- Touring a home means when the buyer and/or the MLS Participant, or other agent, at the direction of the MLS Participant working with the buyer, enter the house. This includes when the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a live, virtual tour to a buyer not physically present.
- A “home” means a residential property consisting of not less than one nor more than four residential dwelling units.

58. Does the requirement for a written agreement with buyers mean that MLS Participants and buyers must enter into a written agency agreement?

- No. MLS Participants and buyers will still be able to enter into any type of professional relationship permitted by state law.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
 - The term of the agreement (e.g., one day, one month, one house, one zip code).
 - The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

59. What does it mean to be “inconsistent with state or federal law or regulation”?

- All MLS Participants working with a buyer must have a buyer written agreement prior to touring, unless state law requires an agreement earlier in time.

60. If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?

- No. In this case, since the MLS Participant is only working for the seller, and not the buyer, the MLS Participant does not need to enter into a written agreement with the buyer.

61. Are written buyer agreements required when listing agents talk with a buyer on behalf of a seller only or as subagents of the seller?

- No. An agreement is not required because the participant is performing work for the seller and not the buyer.

62. Are written buyer agreements required when MLS Participants perform ministerial acts?

- Yes. The obligation to enter into a written buyer agreement is triggered once an MLS Participant works with and takes that buyer is working with that buyer and has taken them to tour a home, regardless of what other acts the MLS Participant performs.
- An MLS Participant performing only ministerial acts—without the expectation of being paid for those acts and who has not taken the buyer to tour a home—is not working for the buyer and therefore does not yet need to enter into a written buyer agreement.

63. If an MLS Participant enters into a non-agency relationship with a buyer, is a buyer written agreement still necessary?

- Yes, regardless of whether it is an agency or non-agency relationship, the obligation is triggered once the MLS Participant works with and takes that buyer to tour a home.

64. Are written buyer agreements required in a dual agency scenario when a single agent works both for the seller and for the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

65. Are written buyer agreements required in a designated agency scenario, when a single broker works both for the seller and for the buyer, and designates an agent to represent the buyer?

- Yes. If an MLS Participant is working as an agent for a buyer, a written agreement is required.

66. Do the written buyer agreement requirements change my state's disclosure requirements to an unrepresented buyer?

- No, you must still comply with all your state and local legal requirements. MLS policies and rules are subject to state and local laws and regulations.

67. How will state laws affect the implementation of the practice change requiring written agreements with buyers?

- Written buyer agreements will be required of all MLS Participants working with buyers prior to touring a home, unless state law requires a written buyer agreement earlier in time.

68. Will MLSs be required to get a copy of buyer written agreements?

- No, an MLS is not required to receive a copy but can request it as a matter of their local enforcement.

69. MLS Participants may not receive compensation for services from any source that exceeds the amount or rate agreed to in the buyer agreement. Does this mean that brokerages can only have one agreement with the buyer?

- No. NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
- The term of the agreement (e.g., one day, one month, one house, one zip code).
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).
- Compensation continues to be negotiable and should always be negotiated between MLS Participants and the buyers with whom they work.

70. In the buyer agreement, can buyers and buyer brokers agree to a range of compensation?

- NAR policy will not dictate the compensation agreed between buyers and buyer brokers (e.g., \$0, X flat fee, X percent, X hourly rate).
- Under the settlement, any compensation agreed to must be objectively ascertainable and not open-ended.
- For example, the range cannot be “buyer broker compensation shall be whatever amount the seller is offering to the buyer.”

71. Should active buyer agreements entered into before the MLS policy change be amended to make sure any compensation is not open-ended and is objectively ascertainable?

- Yes. MLS Participants working with a buyer after the effective date of the policy should take steps to ensure that the buyer has agreed to the necessary terms required by the settlement agreement.

72. Should active buyer agreements entered into before the MLS policy change be amended to remove any provision that authorizes the buyer broker to keep any offers of compensation exceeding the amount of compensation agreed with the buyer?

- Yes. MLS Participants working with a buyer after the effective date of the policy should take steps to ensure that the buyer has agreed to the necessary terms required by the settlement agreement.

73. Does the settlement agreement’s requirement of “objectively ascertainable” and “not open-ended” apply to listing agreements or the compensation sellers pay listing brokers?

- No. Unlike the settlement agreement’s requirements that compensation in buyer agreements be objectively ascertainable and not open-ended, listing agreements can be structured however the seller and listing broker agree, so long as the listing agreement complies with the law, pre-existing MLS policy, and “specifies the amount or rate of any payment” from the seller to the listing broker.

CONCESSIONS

74. Is there an NAR MLS policy about seller concessions?

- No, MLSs will continue to have local discretion on seller concessions. This includes determining what local rules to have about seller concessions, except under the settlement an

MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

75. Can an MLS have a Yes/No seller concession field that indicates whether a seller is offering any concession?

- Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.

76. Is an MLS required to have a seller concession field?

- No, it is a matter of local discretion for each MLS.

77. If my MLS removes the compensation field, can I choose to publish my cooperative commission offer in the agent remarks?

- No. The new rule would prohibit offers of compensation on an MLS.

78. Can MLSs allow decimal points to be used for seller concessions?

- Yes, it is a matter of local discretion which may depend on an MLS's technological capabilities and what an MLS deems to be in the interests of its market.

79. Will seller concessions communicated on an MLS be binding on the seller?

- As a general matter, seller concessions usually aren't binding until they are established in an executed contract such as a listing agreement or a purchase contract.

80. Can the seller concession be a total sum or the percentage of the purchase price?

- This is a matter of local discretion. But an MLS must ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker, or other buyer representative.

NON-FILTERING OF LISTINGS

81. Didn't the NAR MLS policies already include a policy about the non-filtering of MLS listings based on compensation?

- Yes, Policy Statement 8.5 was enacted in 2021. It has only been amended for clarification purposes and to ensure consistency with the proposed settlement agreement.

82. What does it mean to "filter-out" a listing?

- Filtering out listings means to remove listings or block MLS listings from being communicated to customers or clients based on the amount of compensation offered, the existence of an offer of compensation, or based on the listing firm or listing agent.
- Participants have the duty to cooperate which is to share information on listed property and to make property available to other brokers for showing to prospective purchasers and tenants when it is in the best interest of their clients.

83. Is "ranking" or "sorting" different from "filtering out" listings?

- Yes, “ranking” or “sorting” listings is the ability to organize a list of MLS listings in a particular order. Examples of criteria that may be used to rank or sort may be the property sales price, the number of bathrooms or bedrooms, the property location, etc. Ranking or sorting must not involve the removal or the blocking of MLS listings which prevent the communication of those listings to a client or customer.

84. Can an MLS have a function within its system that automatically pushes out emails to clients about available properties hitting the market and allows Participants or Subscribers to filter out listings based on the offer of compensation, listing firm or the listing agent?

- Since offers of compensation may no longer be communicated on an MLS, it should not have any functionality related to broker compensation.
- As for filtering based on listing firm or listing agent, just like the inability of Participants or Subscribers to withhold listings based on those criteria in IDX and VOW displays, MLSs cannot enable that same ability within other MLS functions that provide listing data to consumers.
- An MLS must take appropriate action if it becomes aware that a Participant or Subscriber acts inconsistently with this MLS policy.

COMMERCIAL NON-RESIDENTIAL LISTINGS

85. What do these practice changes mean for commercial practitioners?

- The proposed settlement agreement—like the Sitzer-Burnett lawsuit and the copycat lawsuits—is focused on residential real estate transactions. That means most commercial transactions will not be affected.
- In many markets, commercial listings appear in commercial information exchanges (CIEs) and not multiple listing services (MLSs), and do not include an offer of compensation. The settlement prohibits offers of compensation on an MLS and requires MLS Participants working with buyers to enter into written agreements with their buyers. These practice changes will go into effect August 17, 2024.

86. Are commercial listing services that don’t pull from an MLS subject to the practice change prohibiting offers of compensation on an MLS?

- No. That practice change prohibits offers of compensation on an MLS and it prohibits MLSs from allowing third parties to use MLS data to facilitate a platform for multiple brokerages to make offers of compensation.

87. Does the requirement to use a written agreement before showings apply to commercial transactions?

- No. The settlement and the practice changes it requires are focused on residential transactions, not commercial transactions, or leases.

88. If a commercial broker who is a REALTOR® has access to an MLS, but is showing a property on CIE or another platform that is not associated with an MLS, does the requirement to use a written agreement apply for that property?

- No. The settlement and the practice changes it requires are focused on residential transactions, not commercial transactions, or leases.

IMPACT

89. How does the settlement affect home sellers and home buyers?

- This settlement would preserve the choices consumers have regarding real estate services and compensation.
- After the new rule goes into effect, listing brokers and sellers could continue to offer compensation for buyer broker services, but such offers cannot be communicated via an MLS.
- MLS Participants acting for buyers would be required to enter into written agreements with their buyers before touring a home. These agreements can help consumers understand exactly what services and value will be provided, and for how much.

90. Will this prohibition save money for sellers or buyers?

- As NAR has maintained throughout the litigation, nothing in NAR's current policies (including the MLS Model Rule) has increased costs for buyers or sellers.
- This settlement would preserve the choices consumers have regarding real estate services and compensation. After the new rule goes into effect, listing brokers and sellers could continue to offer compensation for buyer broker services, but such offers could not be communicated via an MLS.
- The settlement expressly provides that sellers may communicate seller concessions—such as buyer closing costs—via an MLS provided that such concessions are not conditioned on the use of or payment to a buyer broker.

91. What should I tell home buyers and sellers they need to know about these changes?

- Consumers should know that after August 17, 2024:
 - If you are a buyer and your agent is using an MLS, you will need to sign a written agreement with your agent before touring a home so you understand exactly what services will be provided, and for how much.
 - Written agreements are required for both in-person and live virtual home tours.
 - You do not need a written agreement if you are just speaking to an agent at an open house or asking them about their services.
 - Agent compensation for home buyers and sellers continues to be fully negotiable.
 - When finding an agent to work with, ask questions about their services, compensation, and these written agreements.
 - More details about these changes and what they mean can be found at [competition.realtor](https://www.competition.realtor). (Added 5/29/2024)

NAR OPERATIONS

92. How will NAR fund the settlement?

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- We will determine how to allocate funds as they become due, working closely with our Finance Committee.

93. How does this settlement change NAR’s value proposition? Why should real estate professionals continue to be NAR members after this news?

- We are confident that this agreement provides a path for NAR to move forward and continue our work to preserve, protect, and advance the right to real property for all.
- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- We continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.

94. Who at NAR signed off on the settlement and was the decision to settle subject to proper NAR governance procedures?

- The settlement was signed off by NAR’s Leadership Team, in consultation with outside legal and financial experts, and in accordance with NAR’s governance procedures.
- Throughout the settlement process, we engaged with a diverse range of members and considered their perspectives and interests while fighting to protect all industry players as best we could.
- As is common in negotiating a complex settlement, there is a need to maintain confidentiality and effectively navigate complex legal considerations, which restricted the extent of the information that NAR could share more broadly.

95. Why is NAR paying so much more to settle than the corporate defendants did?

- This settlement was heavily negotiated and is based on NAR’s ability to pay.
- NAR has secured a release of liability for over one million NAR members, all state/territorial and local REALTOR® associations, all REALTOR® MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.
- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.

96. Does the settlement affect NAR’s ability to continue operating?

- We are confident that this agreement provides a path for us to move forward and continue our work to preserve, protect, and advance the right to real property for all.
- The settlement amount is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission.
- The Finance Committee and Strategic Planning Committee will remain critical in reviewing and providing guidance about NAR’s operating budget to help ensure we will continue to deliver unparalleled value to and advocacy on behalf of REALTORS®, including through our learning opportunities and resources, research, and member tools.

97. Can NAR use reserves to pay for the settlement? If so, how much?

- This settlement was heavily negotiated, and the amount is based on NAR’s ability to pay.
- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- We will determine how to allocate funds as they become due, working closely with our Finance Committee.

98. What does this settlement mean for NAR advocacy efforts? Is there still funding available for those efforts?

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- The settlement amount is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission.
- The Finance Committee and Strategic Planning Committee will remain critical in reviewing and providing guidance about NAR's operating budget to help ensure we will continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS[®], including through our learning opportunities and resources, research, and member tools.

99. Will NAR raise dues or levy an assessment on members to fund the settlement?

- NAR will not change membership dues for 2024 or 2025 because of this payment.

NAR and plaintiffs have reached a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions. The agreement would resolve claims against NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all association-owned Multiple Listing Services (MLSs), and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. The settlement is subject to court approval.

COVERAGE OF NAR'S RELEASE

There have been a lot of incorrect statements about the releases in the NAR settlement. To be clear, nearly every REALTOR® is covered by the release we negotiated in the settlement.

- If you are affiliated with any of the following brokerage groups and are an independent contractor, **you are covered by the proposed settlement** — even if your brokerage may not be covered:
 - *Douglas Elliman, Inc.; Douglas Elliman Realty, LLC; eXp Realty, LLC; eXp World Holdings, Inc.; Hanna Holdings, Inc.; HomeSmart International, LLC; Howard Hanna Real Estate Services; Redfin Corporation; United Real Estate; or Weichert, Realtors®.*
- All other REALTORS® who are members of NAR as of the date of the class notice are covered by the release we obtained under this proposed settlement.
- The release specifically includes all brokerage firms with a principal who is a REALTOR® whose residential transaction volume in 2022 was 2 billion dollars or below.
- Unfortunately, and despite our best efforts to fight for their inclusion, the release does not include brokerage firms whose residential transaction volume in 2022 was above 2 billion dollars.
- For those companies, the settlement provides a mechanism they can pursue if they desire to be included in the release — but to be clear, the settlement does not obligate any of those companies to settle under these terms.
- The settlement provides a cap and an opportunity to mediate a different outcome but it does not obligate these top brokerages to pursue this option if they don't desire.
- Notably, the agreement would release over one million members, all state/territorial and local REALTOR® associations, and all REALTOR® association-owned MLSs that agree to the practice changes.

Implications for Members

- Over one million NAR members are released from liability nationwide.
- NAR's release covers all members unless they are an independent contractor or employee of HomeServices of America or one of its affiliates (the last corporate defendant still litigating the Sitzer-Burnett case), and employees of the remaining corporate defendants named in the cases covered by this settlement.

Implications for Brokerages Owned by Members

- Brokerage entities owned by members that had a residential transaction volume of \$2 billion or below are released from liability nationwide.
- While we would have preferred to protect all industry players, ultimately NAR could not persuade the plaintiffs to include the largest brokerages.
- The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion to obtain releases efficiently if they choose to use it.

Implications for NAR and other REALTOR® Associations

- NAR is released from liability nationwide.
- Any officers, directors, or other participants in NAR activities are released from liability nationwide for their role or participation in NAR.
- All state/territorial and local associations of REALTORS® are released from liability nationwide.

Implications for Association-Owned MLSs

- The release includes all MLSs that are wholly owned by one or more REALTOR® associations.

Implications for Other MLSs

- The agreement provides a mechanism for other MLSs to be covered by it if they choose to use it.
- This mechanism includes opting into the MLS practice changes that are a part of the agreement and paying a per-subscriber fee to the Settlement Fund.
- While we would have preferred to protect all industry players, the MLSs not wholly owned by a REALTOR® association were excluded by plaintiffs.

NEW RULE ABOUT OFFERS OF COMPENSATION ON MLS

We were able to retain the right of consumers to continue to have cooperative compensation as an option so long as they pursue it off-MLS through negotiation and consultation with real estate professionals.

- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. The change will go into effect in late July 2024.

Implications for Members

- There will continue to be many ways in which buyer brokers could be compensated, including through offers of compensation communicated off MLS — as we have long believed that it is in the interests of the sellers, buyers, and their brokers to make offers of compensation — but using the MLS to communicate offers of compensation would no longer be an option.
- The types of compensation available for buyer brokers would continue to take multiple forms, depending on broker-consumer negotiations, including but not limited to:
 - Fixed-fee commission paid directly by consumers
 - Concession from the seller
 - Portion of the listing broker's compensation
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

Implications for home buyers and sellers

- This settlement would preserve the choices consumers have regarding real estate services and compensation.
- After the new rule goes into effect, listing brokers and sellers could continue to offer compensation for buyer broker services, but such offers could not be communicated via the MLS.
- The settlement expressly provides that sellers may communicate seller concessions — such as buyer closing costs — via the MLS provided that such concessions are not conditioned on the use of or payment to a buyer broker.

NEW RULE ABOUT WRITTEN AGREEMENTS

- NAR has long encouraged its members to use written agreements because they help consumers understand exactly what services and value will be provided, and for how much.
- The settlement provides that MLS participants working with buyers must enter into written agreements with those buyers.
- This change will go into effect in late July 2024.

Implications for members and home buyers and sellers

- After the new rule goes into effect:
 - MLS participants acting for buyers would be required to enter into written agreements with their buyers before touring a home.
 - These agreements can help consumers understand exactly what services and value will be provided, and for how much.

WHY SETTLING NOW MAKES SENSE

NAR explored settling throughout the litigation and also carefully considered the other legal options available to us. These included:

- **Appealing:** A win on appeal would only have addressed the verdict in the Sitzer-Burnett case (not any of the copycat cases) and may only have resulted in a new jury trial, leaving members and consumers with continued uncertainty.
- **Chapter 11 reorganization:** In theory, Chapter 11 would have enabled NAR to eliminate its own liabilities while pursuing an appeal of the Sitzer-Burnett verdict. But we believe that would have left members with continued uncertainty and potential liability risk. Chapter 11 would also have paused the litigation against NAR but not the other defendants in the cooperative compensation cases.

Ultimately, while NAR continues to believe that it is not liable for the home seller claims related to broker commissions and that we have strong arguments challenging the Sitzer-Burnett verdict, we decided to reach this settlement to put claims to rest for over one million NAR members and other parties who would be released under the agreement.

NAR OPERATIONS

- Nothing about this settlement changes NAR's commitment to lead our industry forward and support our members.
- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
 - NAR would pay \$418 million over approximately four years.
 - This is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission.
- We will continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.
- NAR has evolved multiple times in its history, including by introducing the MLS Model Rule in 1990s in response to calls from consumer protection advocates for buyer representation, and is doing so again now.
- Our leadership and staff remain focused on their work to deliver the value that has set this association apart for so many years.

WHAT'S NEXT

- Notably, certain groups must opt in to be covered by the settlement. As of April 19, REALTOR® and non-REALTOR MLSs as well as brokerages with 2022 total transaction volume for residential home sales exceeding \$2 billion must take action within 60 days.
- The deadline for these actions is June 18, 2024.
- All agreements reached through this mechanism would be subject to court approval.
- The hearing for final approval is scheduled to take place on November 26, 2024.
- For more information about executing the opt-in mechanisms please visit facts.realtor.
- For questions about completing an opt-in agreement, please contact Mike Rohde at mrohde@nar.realtor.
- Additionally, we will move to have copycat litigation about the MLS cooperative compensation Model Rule stayed, or paused, as to NAR pending the settlement approval process.

NAR MEMBERS CAN CONTINUE TO ACCESS THE LATEST INFORMATION ABOUT THE SETTLEMENT ON FACTS.REALTOR.

NAR WILL ALSO CONTINUE TO PROVIDE UPDATES ABOUT THE SETTLEMENT PROCESS AS IT UNFOLDS ON COMPETITION.REALTOR.

NAR SETTLEMENT TIMELINE*

MAR 22

NAR filed Notice of Settlement / withdrew pending motions and sought to stay litigation

APR 23

Preliminary Approval granted

JUNE 18 - ACTION REQUIRED

- Deadline for REALTOR® MLSs to execute Appendix B (to be included as a Released Party)
- Deadline for brokerages to execute Appendix C (to be included as a Released Party)
- Deadline for non-REALTOR® MLSs to execute Appendix D (to be included as a Released Party)

~SEP

Anticipated Motion in Support of Final Approval

NOV 26

Hearing for Final Approval

MAR

APR

MAY

JUNE

JULY

AUG

SEPT

OCT

NOV

DEC

MAR 15

Settlement Agreement signed

APR 19

Plaintiffs filed Motion for Preliminary Approval

AUG 17 - ACTION REQUIRED

- Earliest date for Plaintiffs to issue class notice
- New NAR MLS Policy takes effect to implement practice changes
- Deadline for REALTOR® MLSs to implement policy changes pursuant to mandatory NAR policy**

SEP 16

Deadline for REALTOR® MLSs and opting-in non-REALTOR® MLSs to implement practice changes to be a Released Party under the settlement agreement

*As of May 7, 2024. Please refer to the settlement agreement for detailed information on deadlines.

**NAR encourages all MLSs to implement the practice changes by August 17, 2024.

More information on the effective date of practice changes can be found in our FAQ at facts.realtor.