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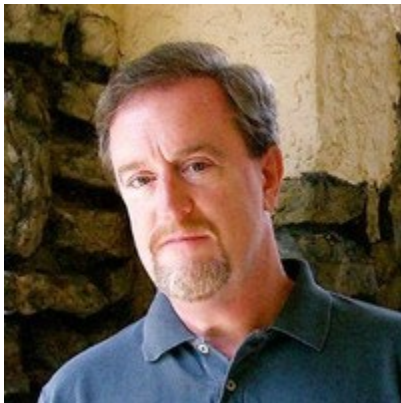
Updates to the NAR Settlement:

Date: January 7th, 2025

Location: East Rise Credit Union Education Center, Williston, VT

THANK YOU TO OUR SPONSORS: Fidelity National Title Insurance Company; Gale Legal Group, PLLC and East Rise 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 Cincinnati, 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



Amey Ryan

Broker/Owner IPJ Real Estate

Amey Ryan is a full-time, real estate Broker living in Leicester, Vermont.

Since her graduation in 1999 from Castleton, Amey has been immersed in the community and has built a strong career in real estate. She started at Lang Associates in Middlebury (now Four Season's Sotheby's International Realty) where she worked as an office manager and a licensed assistant for the managing broker. This was an invaluable experience that allowed her to move on after 14 months of training to a larger office. From 2000 until early 2008 Amey worked out of the Coldwell Banker Bill Beck office in Middlebury. There she was offered a unique opportunity to train and work with some of the top agents in Addison County. Working in a large office provided many opportunities to grow and prosper, however, after almost eight years an even better opportunity presented itself.

In early 2008, Amey and Ingrid began working together at IPJ Real Estate. Over the course of the next six years, the duo built a well-respected and recognizable brand with their dedication to their clients, commitment to quality service and immersion in the community.

In the latest phase of her career, Amey purchased IPJ Real Estate from Ingrid in April 2014. With a strong team of agents and support staff, IPJ Real Estate has continued to grow and prosper in the Addison County real estate world. We continue to provide each of our clients and customers with top-notch service in a friendly and professional environment.

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.

REALTY IN FLUX:
THE NAR COMMISSION LAWSUIT
SETTLEMENT

Charles C. Cain, SVP National Agency, FNF





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.





The Settlement Agreement

- NAR and the other defendants proposed settlement agreements which were approved by the court on 11/26/24.
- Douglas Elliman, Realty One Group, Compass, @properties, and The Real Brokerage also have submitted settlement agreements which have been approved.



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. The opt-in expired 6/18/24
- 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 6/11/24.
- FHA allows up to 6% of sales price in seller concessions. FHA will not count buyer agent costs in the cap.





Potential impact on the realty industry

- Consolidation: Real Trends reports that 2024 is expected to see the largest activity of M&A in realty in 15 years.
- Compass acquisition of @properties, Christie's International and their title and mortgage business for \$444m.
- They will continue to operate as separate brands.





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”.



The DOJ letter to Judge Bough

- On 11/24/24 (2 days before the hearing on the final settlement of Sitzer/Burnett) DOJ issued a letter opposing the settlement.
- DOJ opposed the new requirement of buyer broker agreements before home tours as potentially harming consumers and limiting competition.
- Also requested the judge to advise the defendants in the suit that this settlement would not shield them from further legal action by DOJ.



Will the mood at DOJ change ?

- President-elect Trump has named Gail Slater to head the DOJ antitrust division. Ms. Slater has served as advisor to JD Vance and was tech policy advisor to the National Economic Council in the first Trump administration.
- Announcement included the initiative to break up “Big Tech” so the Google and Apple lawsuits will likely continue.
- Will DOJ have the same focus on the NAR and the realty industry?



But we have a winner folks

- On October 8th, 2024, Howard Hanna Inc. and WestPen MLS were dismissed with prejudice as defendants in the Moratis lawsuit filed in the federal court of the Western District of Pennsylvania.
- The Court found there was no agreement to collude, a necessary component of the Sherman Act and that the MLS did not “require” the offering of a commission but that it simply served as place for informational posting of offered commission payment.



Not just consumers

- On 8/22/24 Homie Technologies, which owns a flat fee/discount brokerage, filed an anti-trust lawsuit in Utah federal court against NAR, Anywhere, Re/Max, BHHS, KW and Utah-based Wasatch Front Regional MLS alleging conspiracy to steer customers away from the brokerage and create “express and tacit boycotts” of discount brokerages. The MLS has since been dismissed by the plaintiff.
- Homie alleges they have texts and emails from the defendants to support their claim. Not an anti-trust argument but anti-trust per se.



And even its own members

- Groups of real estate agents in Texas, Florida, Pennsylvania and Michigan have filed anti-trust and restraint of trade actions against NAR.
- The allegations include that the term “Realtor” is a common usage word and therefore NAR cannot require membership to use it.
- Also that requiring NAR membership to have access to the MLS is discriminatory.

The next battle

- The Clear Cooperation Policy of NAR requires that any listing taken by a NAR member must, within 24 hours of the execution of the listing agreement, post the listing in the local MLS.
- In September Compass and then Anywhere came out in opposing the continuation of the policy. KW and Re/Max disagreed and wanted it continued.
- Discussions continue at NAR on a compromise.



QUESTIONS?

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THANK YOU