

Settlement Factsheet

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.

Ultimately, we believe this was the best outcome we could achieve in the circumstances. The large settlements that other corporate defendants have already reached were important factors going into what NAR could achieve in this settlement.

Coverage of NAR's Release

Implications for Members

- Over one million NAR members are released from liability nationwide.
- NAR's release covers all members other than agents affiliated with HomeServices of America and its related companies (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.

Practice Changes

- 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 mid-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 representation agreements with those buyers.
- This change will go into effect in mid-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.

Other cases concerning the MLS cooperative compensation Model Rule

- Because the agreement would not end litigation as to all defendants, litigation concerning cooperative compensation may continue.

- In *Batton I* (N.D. Ill.), NAR's answer to plaintiffs' amended complaint is due on April 14, 2024. There is a status hearing on May 7, 2024.

Next steps in settlement process

Court approval and opt outs

- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.
- We can expect the process of court review to take several months or more.
- In large class action settlements like this one, objections and opt outs are common, and the plaintiffs and NAR will handle them as they come.

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.

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.

What's next

- The practice changes will go into effect in mid-July 2024.

- The settlement is subject to court approval, which is a process that we can expect to take several months or more and will include an opportunity for interested parties to object. In large class action settlements like this one, objections are common.
- We will move to have litigation about the MLS cooperative compensation Model Rule stayed, or paused, as to NAR pending the settlement approval process.
- NAR will also continue to provide updates about the settlement process as it unfolds on [competition.realtor](https://www.competition.realtor).