

# NAR Settlement FAQs

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## Settlement Overview and Key Terms

### 1. Why did NAR enter into this settlement?

- Since the litigation began, we have worked consistently to reach a resolution with the plaintiffs.
- We have always wanted to reduce the significant strain on our members and provide a path forward for the industry and, 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 association-owned 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 the MLS:** NAR has agreed to put in place a new rule prohibiting offers of compensation on the 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 in late July 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 in late July 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 Multiple Listing Service (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, association-owned 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 Multiple Listing Service (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 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.

## **Who Is Covered**

#### **6. 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: 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® *OR*
  - You are associated with HomeServices of America or one of its affiliates.
  - The date of the class notice has not been set, but it is anticipated to be no earlier than August 17, 2024.

**7. 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.
- The length of your membership does not matter, only that you are a member on the date of class notice.
- However, 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.
- The date of class notice has not been set, but it is anticipated to be no earlier than August 17, 2024.
- NAR will announce the date of the class notice once it has been determined.

**8. 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?**

- With the exception of 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. Additionally, for clarification, 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, and no further affirmative steps are required.

**9. What if an agent has different releases under the settlement (e.g., moved between brokerages?) Are they covered by the release in this settlement agreement?**

- The release covers most NAR members for the entire time period, and even if an agent is not covered for some of the time period, they may be

covered for others for the time they were not affiliated with HomeServices and its related companies.

**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.
- Additionally, for clarification, 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, and 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.
- 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?**

- 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, and would also require their compliance with the practice changes agreed to in the settlement.

**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.
- But, 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.
- They can choose whether or not to use the mechanism NAR negotiated.
- Our options included reaching a settlement – whose terms were always going to be affected by the large settlements reached by other corporate defendants – or continuing to appeal the Sitzler-Burnett verdict and litigate the related cases.
- That second option likely would have resulted in our filing for Chapter 11 protection, leaving all members, associations, MLSs, and brokerages exposed.

**15. What is the mechanism 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](mailto:realtorsoptin@jndla.com), [realtorsoptin@cohenmilstein.com](mailto:realtorsoptin@cohenmilstein.com), and [nargovernance@nar.realtor](mailto: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 the mechanism for non-association 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.
- Broadly speaking, the agreement provides two paths:
  - Option 1: The MLS can elect to pay an amount based on a pre-determined formula based on number of MLS subscribers.
  - Option 2: The MLS can elect to participate in non-binding mediation within 110 days following preliminary approval of the settlement.
- Under both options, participating non-association 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.
- In order to be released under the settlement, MLSs not wholly owned by REALTOR® associations must agree to and execute Appendix D – Non-REALTOR® MLS “Opt In” Agreement and return it — along with the required indication noted in paragraph 20 of Appendix D — to the email addresses [realtorsoptin@jndla.com](mailto:realtorsoptin@jndla.com), [realtorsoptin@cohenmilstein.com](mailto:realtorsoptin@cohenmilstein.com), and [nargovernance@nar.realtor](mailto:nargovernance@nar.realtor) within 60 days of the filing of the motion for preliminary approval (by June 18, 2024).
- Non-association MLSs can also choose not to participate in this settlement.

#### **17. Do association-owned MLSs need to do anything to be covered by the release?**

- Yes. Association-owned MLSs need to execute an appendix to the agreement in which they agree to abide by the practice changes in the agreement.
- In order to be released under the settlement agreement, all MLSs wholly owned by REALTOR® associations must agree to and execute Appendix B - REALTOR® MLS “Opt In” Agreement and return it to the email addresses [realtorsoptin@jndla.com](mailto:realtorsoptin@jndla.com), [realtorsoptin@cohenmilstein.com](mailto:realtorsoptin@cohenmilstein.com), and [nargovernance@nar.realtor](mailto:nargovernance@nar.realtor) within 60 days of the filing of the motion for preliminary approval (by June 18, 2024).

## Practice Changes

### *Offers of Compensation*

#### **18. Is it possible for offers of compensation to be conveyed through channels other than the MLS?**

- Yes. 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).

#### **19. How will buyer brokers get paid now?**

- 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.
- Offers of compensation could 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.

#### **20. 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 would no longer be an option on an MLS.
- This change will not prevent offers of cooperative compensation off an MLS. And it will not prevent sellers from offering buyer concessions on an MLS (for example – concessions for buyer closing costs). Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.

#### **21. Why was prohibiting the publication of compensation offers in the 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 the 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.

**22. Is it possible for offers of compensation to be conveyed through channels other than the MLS?**

- Yes. 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.

**23. 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.

**24. Are independent MLSs affected by the prohibition of publishing compensation offers on the MLS?**

- Independent MLSs are not required to prohibit offers of compensation on the MLS pursuant to the agreement unless they choose to opt into the settlement, in which case they will need to agree to the practice changes in the agreement and pay a per-subscriber fee to the Settlement Fund.

**25. 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.

**26. Are commercial listing services that don't pull from the MLS subject to the practice change prohibiting offers of compensation on the MLS?**

- No. That practice change prohibits offers of compensation on the 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.

**27. How does this affect the existing listing agreements that authorize an offer of compensation to be made in the MLS?**

- After the new rule goes into effect, listing agreements should be amended to reflect that offers of compensation cannot 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.

**28. How would this prohibition affect pending transactions?**

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

**29. What steps will buyers' agents need to take to ensure they are being paid for their services?**

- 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.
- In fact, the settlement provides that MLS participants working with buyers must enter into written agreements with those buyers before touring a home.
- These agreements can help consumers understand exactly what services and value will be provided, and for how much.
- 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. 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.

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

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

**32. How would the prohibition of offers of compensation on the MLS affect pending transactions/current deals?**

- The practice changes will go into effect in late July 2024.
- Until the practices changes go into effect, offers of compensation are still permitted on the MLS.

**33. Doesn't moving offers of compensation off-MLS introduce friction into the homebuying process? What happens if a buyer broker can't get timely information from a listing broker about offers of compensation?**

- This will be a time of adjustment, but real estate professionals have adjusted to change many times over the years.
- 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.

**34. Wasn't the purpose of publishing offers of compensation on the MLS to promote transparency? Doesn't moving offers of compensation off-MLS reduce transparency?**

- NAR remains dedicated to bolstering transparency in the marketplace and working to ensure that consumers receive comprehensive, equitable, transparent, and reliable property information, as well as the ability to have affordable professional representation in their transactions.

**35. Won't prohibiting offers of compensation on the 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. 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 the MLS.

**37. How long until the offer of compensation field needs to be removed from MLSs?**

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

**38. 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, as NAR's policy has required for decades.

**39. 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 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, 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.

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

- Yes.

**41. 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.

### *Written Agreements*

#### **42. 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.

#### **43. 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.

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

- The MLS will be responsible for enforcing the rule regarding written agreements, similar to how the MLS enforces other existing rules.

#### **45. Will written agreements be needed for walk-in viewings (e.g., office or open houses)?**

- NAR staff will work with the MLS advisory board to implement the new rules relating to the agreed upon practice changes.
- When the new rules roll out – and on an ongoing basis – NAR will continue to provide guidance and training in line with industry best practice to help members adapt to the changes to come.

#### **46. 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).

**47. 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.

**48. What does it mean to tour a home?**

- Written buyer agreements are required before a buyer tours a home for sale listed on the MLS.
- 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(s) 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.

**49. 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).

**50. 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. The new rule will cover every type of relationship where an MLS participant is working with a buyer.

**51. 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. If the MLS participant is working only as an agent or subagent of the seller, then the participant is not working for the buyer. In that scenario, an agreement is not required because the participant is performing work for the seller and not the buyer.

**52. Are written buyer agreements required when MLS participants perform ministerial acts?**

- Yes. The obligation is triggered once the MLS participant is working with that buyer and has taken them to tour a home, regardless of what other acts the MLS participant performs.
- But 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.

**53. 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.

**54. 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.

**55. 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.

**56. 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.”

**57. 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.

**58. 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.

**59. Should active listing or buyer agreements entered into before the MLS policy change be amended to include a conspicuous disclosure that compensation is not set by law and is fully negotiable?**

- MLS participants must make this disclosure, but active agreements do not need to be amended to accomplish this. MLS participants can do a separate disclosure to satisfy the requirement.



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

- If the sales contract is signed 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 the sales contract is not signed before the date the participant's MLS implements the policy changes, the offer on the 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.

**61. 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.

**62. Should active listing agreements entered into before the MLS policy change be amended to address the settlement agreement's prohibition on offers of compensation being communicated on the MLS?**

- If the listing agreement instructs the listing broker to make an offer of compensation without reference to the 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 the 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 the MLS and will not be violating the listing agreement by failing to make an offer of compensation on the MLS.

## *Other*

**63. 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 could not be communicated via the 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.

#### **64. 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 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.

#### **65. How does the settlement affect MLSs?**

- The agreement would release association-owned MLSs from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
- While the release excludes MLSs that are not wholly owned by REALTOR® associations, the agreement provides a mechanism for those MLSs to obtain releases efficiently 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.
- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. This change will go into effect in late July 2024.
- Additionally, we have agreed to require MLS participants working with buyers to enter into written agreements with their buyers. This change will also go into effect in late July 2024.

#### **66. 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.

**67. 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.

**68. 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 around late July.

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

- While the settlement is subject to court approval, which is a process that we can expect to take several months or more, NAR agreed under the settlement to put the practice changes in place no later than the date of class notice, which will be no earlier than August 17, 2024.
- This was to ensure that there was no gap that could create liability since the release only extends through the date of class notice.

## **NAR Operations**

**70. 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.

**71. 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 will continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.

**72. 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.

**73. In what ways did NAR attempt to include all members in the settlement process, and what were the limitations?**

- 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.

**74. What was NAR's overarching strategy with the settlement and why did NAR choose to not more actively advocate for its position in the public domain during the legal negotiations?**

- Since the litigation began, we have consistently worked to reach a resolution with the plaintiffs.

- In the months since the Sitzer-Burnett verdict, we redoubled those efforts.
- 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.
- We have always wanted to reduce the significant strain on our members and provide a path forward for the industry and, 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.
- 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 has been proactive in publicly advocating our position throughout the litigation. We have published multiple op-eds and provided our perspective to various news outlets reporting on NAR and the challenges our industry faces.
- We have also consistently updated Competition.Realtor—our online hub of information about how REALTORS® and local MLS broker marketplaces create competitive, efficient, pro-consumer markets—with new information, materials, and FAQs pertinent to the litigation.

**75. 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 association-owned 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.

**76. 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.

**77. 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.

**78. 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.

**79. 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.

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

- We expect that the court will rule on the motion for preliminary approval soon.
- The practice changes set forth in the settlement agreement are slated to take effect in late July of this year, and class notice will take place no earlier than August 17, 2024.
- 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.