

NAR SETTLEMENT UPDATE

NCST | Community Impact Briefing

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NARdotRealtor



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NATIONAL
ASSOCIATION OF
REALTORS®

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OVERVIEW

- Trial Recap
- Settlement Terms
- Practice Changes
- NAR Advocacy Efforts
- Resources

TRIAL RECAP

SITZER-BURNETT

- Sitzer-Burnett is a class-action lawsuit that was filed in Missouri federal court by a group of home sellers in the state against NAR and other defendants, including Anywhere, Berkshire Hathaway HomeServices, Keller Williams, and RE/Max.
- **NAR strongly disagrees with the October 2023 verdict and maintains that compensation has been and continues to be negotiable.**

A close-up, low-angle shot of a pair of brass scales of justice against a light blue background. The scales are slightly out of focus, with the central pillar and the two pans visible. The lighting is soft, highlighting the metallic texture of the scales.

SETTLEMENT TERMS

PROPOSED SETTLEMENT AGREEMENT

- On March 15, 2024, NAR announced a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions.
- The settlement is subject to final court approval, with a hearing set for November 26, 2024.

KEY SETTLEMENT TERMS

1. Release of liability

- 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 brokerage entities with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.
- 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 chose to use it.

2. Offers of compensation prohibited from the MLS

- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
- This change went into effect on **August 17, 2024**.

KEY SETTLEMENT TERMS

3. Written agreements for MLS participants acting for buyers

- The settlement provides that MLS participants working with buyers must enter into written representation agreements with those buyers.
- This change went into effect on August 17, 2024.

4. Settlement payment

- Under the terms of the agreement, NAR would pay \$418 million over approximately four years.
- NAR's membership dues for 2024 and 2025 will not change because of this payment.

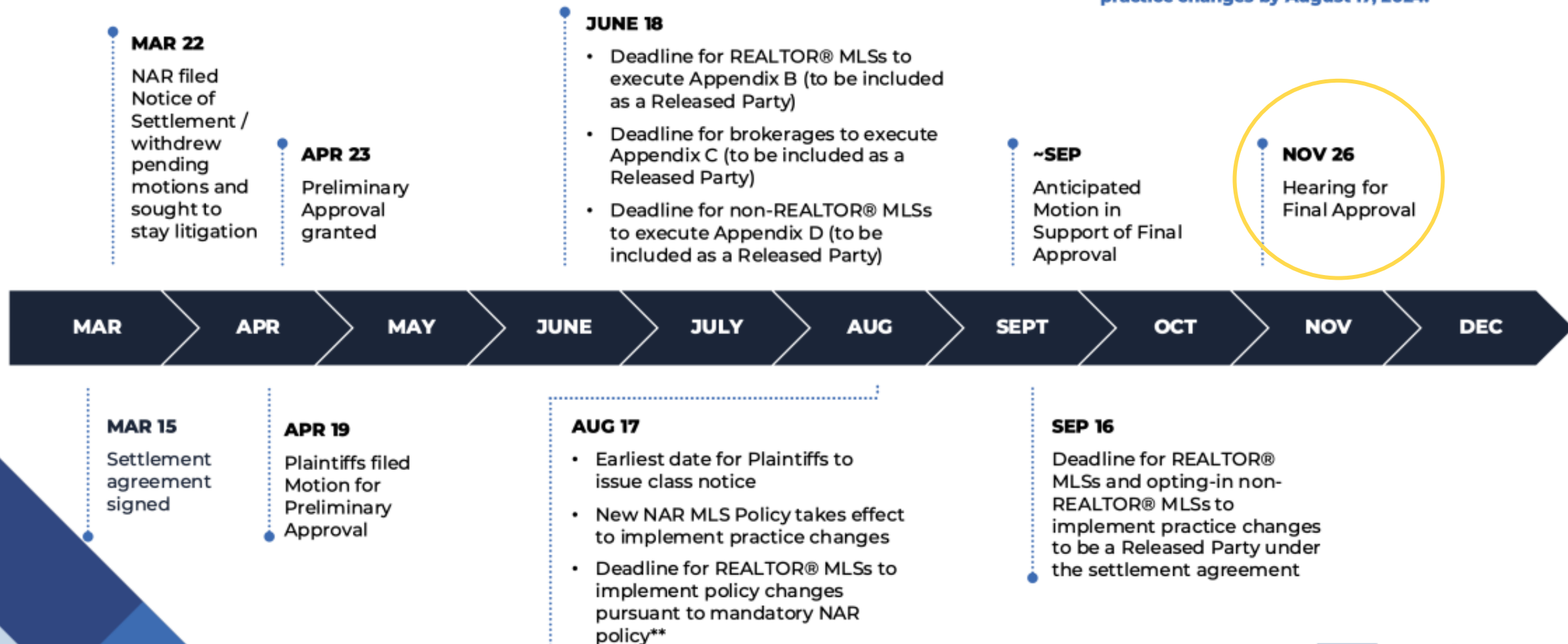
5. NAR continues to deny any wrongdoing

- The settlement, which is subject to court approval, makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule) that was introduced in the 1990s in response to calls from consumer protection advocates for buyer representation.

NAR SETTLEMENT TIMELINE*

*As of June 24, 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.





PRACTICE CHANGES

KEY PRACTICE CHANGE AREAS



- Offers of Compensation
- Listing Agreements
- Written Buyer Agreements

OFFERS OF COMPENSATION

- Effective August 17, offers of cooperative compensation are **PROHIBITED** on a REALTOR® association owned MLS*, per new MLS policies
 - Includes all listing types (residential, commercial, rental) that appear on the MLS
 - Cannot post a link on MLS directly to a listing on the broker's site which includes an OOC
- Offers of compensation remain an option, **off-MLS**
- Consumers will continue to have choices regarding real estate services

** And non-REALTOR® association owned MLSs that opted in to the settlement.*

OFFERS OF COMPENSATION

- Listing brokers may advertise an offer of compensation in any way off-MLS, including:
 - On the listing, on their own website
 - Signs and sign riders
 - Flyers
 - Social media posts
 - Text, email, phone calls
- MLS/IDX may not be used to create, facilitate or support a platform for offers compensation from multiple brokers

OFFERS OF COMPENSATION

- Seller concessions are allowed on MLSs, at the MLS's discretion
 - Cannot be limited to or conditioned upon the retention of or payment to a cooperating broker
 - Buyer should state in the purchase offer how they want the concessions to be used, including compensating their broker
- Buyers may ask the seller to pay their broker's fee as a term of the purchase agreement
 - Does not violate SOP 16-16

LISTING AGREEMENTS

Required terms:

- 1 State conspicuously that broker commissions are not set by law and are fully negotiable
- 2 Conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker or other representative (e.g., real estate attorney) acting for buyers, and specify the amount or rate of such payment

WRITTEN BUYER AGREEMENTS

Two triggers for a written agreement:

- “Working with a buyer”
- “Touring a home”

WHAT DOES THAT MEAN?

Working with a buyer:

MLS Participants who **provide brokerage services** to a buyer

- Identifying potential properties
- Arranging for the buyer to tour a property
- Negotiating on behalf of the buyer
- Writing and presenting offers

As opposed to MLS Participants who simply market their services or just talk to a buyer—like at an open house or providing an unrepresented buyer access to one of their listed homes

WHAT DOES THAT MEAN?

Touring a home:

- When the buyer and/or the MLS Participant (or other agent, at the direction of the MLS Participant working with the buyer) **physically enter the home**
- 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

WHEN DOES IT NEED TO BE SIGNED?

“Before touring a home”

UNLESS

State law dictates an earlier time

WHAT ARE THE REQUIRED TERMS?

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

WHAT ARE THE REQUIRED TERMS?

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

4

A conspicuous statement that broker fees and commissions **are not set by law** and are fully negotiable.

WHAT TYPES OF AGREEMENTS?

Any type of written agreement can be used*

- Exclusive buyer representation agreement
- Non-exclusive buyer rep agreement
- Non-agency
- Transactional
- Limited service
- Designated agency
- Dual agency
- One property, one weekend ...

**Must comply with state law*

WHAT TYPES OF AGREEMENTS?

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).



ADVOCACY

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NAR's Advocacy Related to the Settlement

- NAR advocated in support of a policy change to Veteran Administration (VA) lending requirements to allow VA buyers to pay for representation when using VA loan products.
- The VA implemented a temporary policy change to allow VA buyers to pay compensation.
- NAR remains committed to advancing homeownership, including working to close the homeownership gap and serving first-time, first-generation, and buyers of color.
- NAR is also continuously working to ensure REALTORS® compliance with all federal and state housing laws.
- NAR is engaging with various real estate industry groups, government stakeholders, and housing advocates to discuss the settlement and to message the practice changes.
- NAR has developed several resources for real estate professionals, and consumers to better understand the settlement.

Key Takeaways

- **Buyer Representation Agreements** – The use of Buyer Agreements promote transparency; allows each party to be clear about compensation and expectations; establishes a contractual agency relationship between the agent and the buyer; and promotes clarity.
- **Compensation is always negotiable-** The parties to the transaction should negotiate the terms and execute a contract that is reflective of their desires.
- **Consumer Choice-** Sellers can still make offers of compensation for the buyers' agency and representation. Buyers and sellers have choice under and should be empowered to understand their rights and options.

RESOURCES

NAR Resources

- All resources are located at facts.realtor and include frequently asked questions about the settlement, the recent practice changes, and more. The resources include resource guides for consumers, real estate brokers, and NAR members.
- The resources include:
 - [Settlement FAQs for Consumers](#)
 - [Settlement FAQs for Real Estate Professionals](#)
 - [The Consumer Guide on Offers of Compensation](#)
 - [The Consumer Guide to Negotiating Written Buyer Agreements](#)
 - [The Consumer Guide on Seller Concessions](#)
 - [The Consumer Guide on the Multiple Listing Services \(MLSs\)](#)
 - [The Consumer Guide: What Veterans Need to Know about Buying a Home](#)
 - [The Consumer Guide to Fair Housing](#)
 - [Consumer Guide to Open Houses and Written Agreements](#)
 - [REALTORS® Duty to Put Client Interest Above Their Own](#)
 - Several videos for clarity and guidance as well on the settlement.

For the latest information, please visit:
Facts.Realtor