



NAR Settlement | Frequently Asked Questions

(Last Updated April 12, 2024)

On March 15, 2024, the National Association of REALTORS® (NAR) announced it entered into a nationwide settlement covering the commissions lawsuits brought by sellers in many states across the country. This settlement includes the state and local associations and REALTOR®-owned MLSs, such as the Houston Association of REALTORS® (HAR). *Note that the settlement must still be approved by the court, which may take some time.*

We know many people have questions about the proposed rule changes. HAR is working to get you answers. HAR strives to be transparent and will update the FAQs as we learn more information.

How does the NAR settlement impact HAR members/MLS subscribers?

A: There are two proposed rule changes that are part of the settlement. NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. Brokers and agents will have to negotiate compensation directly with their client. Additionally, NAR will require agents to enter into written buyer agreements with their buyers before touring a home. Click [HERE](#) for a link to the key points of the settlements and new policies for MLS subscribers.

When do the rule changes take effect?

A: If the settlement is approved, 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.

Do I have to be a member of NAR?

A: According to NAR rules under which we must operate, being a REALTOR means joining the national, state, and local associations. REALTOR® means member of the National Association of REALTORS®. Therefore, all REALTORS® belong to the National Association of REALTORS® and agree to abide by our Code of Ethics. In order to maintain REALTOR® membership, members must pay local, state, and national association dues and assessments. There is no ability to bifurcate membership between local, state, or national associations.

Will this settlement impact my dues?

A: HAR dues will remain unchanged as they have for the last 20 years. When it comes to NAR dues, NAR says its dues will not go up in 2024 and 2025 because of the payment that is being made as part of the settlement.

Will listing agreements be shared with buyer's agents and vice versa?

A: This is not needed under the terms of the settlement.

How does the settlement impact intermediary?

A: Intermediary may be a practice that becomes more popular for a listing agent confronted with an unrepresented buyer who might accept the intermediary relationship for the one property transaction.

Will open houses be considered the first showing for unrepresented buyers and therefore require a signed Buyer Representation Agreement?

A: No. We do not believe that an unrepresented buyer at an Open House invokes the requirement of having a Buyer Representation Agreement in place.

Can a listing agent show their listing without a Buyer Representation Agreement?

A: The Listing Agent may show a listing to an unrepresented buyer since they would not be seeking services from that Listing Agent who is already obligated to represent the interests of the seller.

Is a Buyer Representation Agreement enforceable?

A: Yes. It is a contract, so it is enforceable.

Will the policy changes impact existing listings or homes already under contract?

A: 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.
- MLS participants working on behalf of 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.

How will the settlement affect pending transactions?

A: The practice changes will go into effect in mid-July 2024. Note the settlement is subject to court approval.

Will the policy changes impact any of the current forms being used?

A: Texas REALTORS® is reviewing its forms to determine what changes are needed to be in compliance with the settlement agreement if approved by the court. Texas REALTORS® is particularly focused on client representation and broker compensation to ensure those issues are addressed in the forms in a way that meets the needs of Texas REALTORS® members and their clients going forward.

Does the settlement change MLS rules for off-market sales or pocket Listings?

A: No. The MLS rules for off-market sales or pocket listings are not impacted by the proposed settlement.

How does this settlement impact home buyers and sellers?

A: 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.
- MLS participants working on behalf of 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.

How will this impact VA loans since they do not allow the buyer to pay commissions?

A: NAR recently submitted a letter to the Department of Veterans Affairs (VA) urging them to revise its policies pertaining to fees veterans cannot pay when using their VA home loan benefit.

NAR specifically calls on the VA to allow their buyers to compensate their representative directly, which is currently prohibited under their policies. The letter stresses the importance of professional representation for veterans in the purchasing process and outlines the potential consequences for VA buyers in situations where compensation is not offered from a seller.

Will the settlement change anything about how commercial real estate is practiced?

A: No. The settlement only deals with residential real estate. There are no changes that would be required for the commercial real estate industry as a result of the settlement.

How does the DOJ investigation impact the proposed settlement?

A: The DOJ investigation is a completely separate legal process from the proposed settlement, so it would have no impact on it. What it does mean is that there could still be practice changes down the road as a result of the DOJ investigation. However, there is a chance that the DOJ could oppose or concur with the current settlement depending on what it files, if anything, with the court that will ultimately approve the settlement or not.

FAQs About Offers of Compensation

Are commissions still negotiable?

Yes. Compensation is currently negotiable and will continue to be negotiable. Compensation should always be negotiated between agents and the consumers they serve.

Can offers of compensation be conveyed through channels other than the MLS?

A: Yes. Offers of compensation can continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. According to NAR, listing brokers could display an offer of compensation to a buyer agent on their own website or on social media. However, sellers can still offer buyer concessions (i.e. buyer closing costs) on the MLS.

Can offers of compensation be displayed on ShowingSmart?

A: Offers of compensation cannot be displayed in ShowingSmart since it is affiliated with HRIS.

Can the commission information be put in the agent notes/remarks?

A: Under NAR's proposed rule changes, offers of compensation cannot be communicated through the MLS.

Can I add an attachment explaining compensation in the agent attachments section?

A: No. That would not be allowed as that is still an offer of compensation being made through the MLS.

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

A: 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).

Can bonuses to agents be communicated on the MLS?

A: Bonuses will not be able to be expressed in the MLS based on the terms of this settlement.

Can IDX-fed websites have offers of compensation?

A: No because there will be no information in the feed to display.

How will buyer brokers get paid?

A: 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

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

A: 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.

FAQs About Leases

How does the settlement impact agents when handling rental properties?

A: The field for offers of compensation will no longer be allowed in the MLS, so an agent working with a renter would need to contact the property manager/owner/leasing agent to find out what, if any, compensation is being offered.

Are renters required to sign a Buyer/Tenant Representation Agreement before touring a rental property?

A: The settlement only deals with properties for sale on this issue of buyer representation, and it does not address rentals or change anything about needing a written agreement prior to showing a rental property. It would still be a smart idea to have a conversation with the client about how the agent will be compensated and have the Buyer/Tenant Representation Agreement signed.

FAQs About Training

Will HAR offer training/classes about the policy changes?

A: HAR is offering a Value Propositions for REALTOR® class each month to help our members present themselves in the best way possible. We will incorporate any required changes into our contracts classes, as well as any others that are appropriate. Once we know more, if it warrants having a dedicated class, we will certainly offer that as well. Also, look for other supporting materials and webinars to answer questions going forward. You may visit www.har.com/edu for more course information or to register today.

Where can I find more information about the NAR settlement?

A: You can find more information as well as FAQs on [NAR's website](#).

We will continue to update the FAQs on HAR.com/lawsuits as we get more information.