

# NAR SETTLEMENT FAQ

March 20, 2024

## Background

On March 15, 2024, the National Association of REALTORS® (“NAR”) entered into a proposed settlement agreement to resolve litigation brought by home sellers relating to broker commissions. If approved by the court, the settlement would release the following from liability nationwide for such claims:

- NAR
- All NAR members, other than agents affiliated with HomeServices of America (the last remaining corporate defendant in the Sitzer-Burnett case) and its related companies
- All state/territorial and local REALTOR® associations
- All MLSs that are wholly owned by REALTOR® associations (“REALTOR® MLSs”)
- All brokerages with an NAR member as principal whose total transaction volume for residential sales in 2022 was \$2 billion or below
- Brokerages with an NAR member as principal whose total transaction volume for residential sales in 2022 exceeded \$2 billion, if they choose to opt in
- MLSs not wholly owned by a REALTOR® association (“Non-REALTOR® MLSs”), if they choose to opt in

## 1. What are the major terms of the settlement?

- **Monetary:** NAR will pay \$418 million over approximately four years.
- **Practice changes:** NAR has agreed to implement certain practice changes, which are discussed in more detail in Question #2 below. These practice changes include the prohibition of offers of compensation on the MLS, and a new rule requiring MLS participants working with buyers to enter into written representation agreements before the buyer tours a home. MLSs will also need to implement certain practice changes, many of which are similar to the practice changes agreed to by NAR, in order to be released from liability.
- **No admission of liability:** NAR continues to deny any wrongdoing with respect to its cooperative compensation policies.
- **Date ranges:** The settlement applies to sales of homes that were listed on an MLS during the following date ranges:

1	Homes listed on MLSs identified in the Moehrl case (the “Moehrl MLSs”)	March 6, 2015 to date of Class Notice (which will be sent out no earlier than 120 days after a motion for preliminary approval of the settlement is filed)
2	Homes listed on MLSs identified in the Sitzer-Burnett case (the “Sitzer-Burnett MLSs”)	April 29, 2014 to date of Class Notice
3	Homes listed on MLS PIN	December 17, 2016 to date of Class Notice

4	Homes in Arkansas, Kentucky, and Missouri but not on the Moerhl MLSs, the Sitzer-Burnett MLSs, or MLS PIN	October 31, 2018 to date of Class Notice
5	Homes in Alabama, Georgia, Indiana, Maine, Michigan, Minnesota, New Jersey, Pennsylvania, Tennessee, Vermont, Wisconsin, and Wyoming, but not on the Moerhl MLSs, the Sitzer-Burnett MLSs, or MLS PIN	October 31, 2017 to date of Class Notice
6	All other homes	October 31, 2019 to date of Class Notice

## 2. What practice changes will NAR be implementing?

As part of the settlement agreement, NAR has agreed to implement the following practice changes:

- Prohibit offers of compensation on the MLS.
- Require REALTOR® MLSs to eliminate all broker compensation fields on the MLS and to prohibit offers of compensation via any other field.
- Eliminate and prohibit any requirements conditioning participation or membership in a REALTOR® MLS on offering or accepting offers of compensation to buyer brokers.
- Agree not to create or support any non-MLS mechanism for listing brokers/sellers to make compensation offers to buyers (however, data may still be shared with third parties so long as the data is not used sidestep these changes).
- Require REALTOR® MLS participants working with a buyer to enter into a written agreement before the buyer tours any home, which must specify the amount of compensation that the participant will receive from any source or how this amount will be determined.
- Prohibit REALTORS® and REALTOR® MLS participants from representing that their services are free unless they will receive no compensation from any source.
- Require REALTORS® and REALTOR® MLS participants acting on behalf of sellers to disclose and obtain approval from sellers for any amount of payment they will make to buyers. This disclosure must be in writing and be provided in advance of an agreement to pay buyers.
- Require REALTORS® and REALTOR® MLS participants to disclose to sellers and buyers that broker commissions are not set by law and are fully negotiable in their (1) listing agreement, (2) agreement with buyers, and (3) in any pre-closing disclosure documents if these agreements and documents are not government-specified forms. If these documents are government-specified forms, then a disclosure must be included stating that broker commissions are not set by law and are negotiable.

NAR has stated that these practice changes will go into effect in mid-July 2024. However, it is possible that some MLSs will start implementing changes earlier, so please make sure to stay up to date on any changes to the MLSs that you are subscribed to.

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

Yes. Offers of compensation to buyer brokers can still be made – just not on the MLS. Also, sellers can continue to offer buyer concessions on the MLS.

**4. What do REALTOR® MLSs need to do in order to be released under the settlement agreement?**

In order to be released, REALTOR® MLSs must agree to the practice changes set forth in the settlement agreement by executing Appendix B to the settlement agreement. Appendix B must be submitted within 60 days of the filing of the motion for preliminary approval.

**5. For brokerages, what does “total transaction value” mean?**

The settlement agreement defines “total transaction value” as the aggregate dollar value of all residential home sales and purchases of a real estate brokerage, together with the aggregate dollar value of all residential home sales and purchases of that brokerage’s direct and indirect parents (including holding companies), subsidiaries, affiliates, associates and of each’s franchisees. For any transactions in which a real estate broker represented both the buyer and seller, that transaction would be counted twice.

**6. Can a REALTOR®, association, brokerage or MLS that is covered by this settlement be sued in a different lawsuit relating to broker commissions?**

It depends on the specific facts and circumstances. If the proposed settlement is approved, then the released parties should be protected from many similar types of antitrust claims. However, it is possible that some class members will choose to opt out of the settlement. Additionally, the proposed settlement only covers claims by home sellers; it does not extend to claims by home buyers.

**7. Will NAR increase membership dues to fund the settlement payment?**

NAR has stated that membership dues for 2024 will not change because of the settlement.

**8. What are the next steps in the settlement process?**

A motion for preliminary approval of the settlement will be submitted to the court. The court review process will likely take several months.