

NAR Proposed Class Action Settlement

Background

For years, the National Association of REALTORS® has defended lawsuits filed in different jurisdictions alleging that the MLS mandatory offer of compensation was an illegal price fixing agreement in violation of federal anti-trust laws. The first of these cases to reach a jury verdict was decided in Missouri in October 2023. The jury found NAR and various brokerage companies liable for \$1.8 billion. While the verdict was awaiting court approval, over two dozen copycat lawsuits were filed in different cities throughout the nation. On March 15, 2024, NAR announced a comprehensive settlement of the Missouri suit that would put an end to the litigation nationwide if approved.

What are the most significant elements of the Proposed Settlement? When will the agreement be final?

- NAR agreed to pay over \$400 million, spread out over 4 years.
- NAR agreed that any REALTOR® owned MLS would prohibit seller's agents from using the MLS to make an offer of compensation to agents representing buyers who purchased the seller's property.
- Buyers' agents would be required to have a written representation agreement with their buyer clients.
- Agents working with buyers would be required to have a written representation agreement before showing properties to buyers.
- Buyers' agents may not be paid more than the amount specified in a representation agreement.
- It is expected that the proposed settlement will be approved by the applicable court and NAR will take actions to implement its terms by mid-July 2024.

How will buyers' agents get paid? Can sellers' agents still offer to compensate them for bringing a buyer?

- Buyers' agents can get paid directly from buyer clients, according to the terms of their representation agreement.
- Buyers' agents can get paid directly from the seller if a term in the buyer's offer asks the seller to pay the buyer's agent and the offer is accepted by the seller.
- Buyers' agents can get paid by the seller's agent if an agreement has been reached with the seller's agent.
- Seller's agents can offer to compensate buyers' agents without using the MLS. Any such offer of compensation can be made directly to the buyer's agent or may be conveyed elsewhere, such as on an agent's website.

Should a seller's agent's offer of compensation be documented?

In California, compensation agreements between real estate licensees do not need to be in writing to be enforceable. However, in the absence of a writing, establishing who agreed to pay whom, how much, when, and under what circumstance can lead to disputes. A cooperating broker compensation agreement (C.A.R. Form CBC) documents the terms of the agreement between the seller's agent and buyer's agent. The CBC, revised June 2021, is being revised to reflect the proposed settlement and will be released by C.A.R. before the Settlement implementation date.

Does C.A.R. have a buyer representation agreement?

Yes, the Buyer Representation and Broker Compensation Agreement (C.A.R. Form BRBC). The BRBC, revised 12/22, is being revised to reflect the proposed settlement and will be released by C.A.R. before the Settlement implementation date.

Can an agent show a property to a buyer who shows up at an open house without an agent?

An agent showing property, or giving a tour to a buyer, must have a written representation agreement. An agent holding an open house must either have a buyer sign such an agreement or document the buyer's desire to be unrepresented. The BRBC can be used. C.A.R. is creating a new form to be used at open houses, and the form will be released by C.A.R. before the Settlement implementation date.

For more information, visit NAR's resource page: <https://www.nar.realtor/the-facts>