



The Ultimate NAR Settlement Field Guide

By Darryl Davis, CSP

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Dedication

To the real estate professionals who rise every day with a commitment to serve their clients and communities, this guide is for you.

You are the backbone of our industry, the driving force behind every home sold, every family settled, and every community built. In the face of unprecedented change and challenge, you continue to show up, bringing expertise, empathy, and determination to the table.

This book is dedicated to all of you who are in the trenches, navigating this new real estate reality with courage and conviction. Your work is not just about transactions; it's about transforming lives, shaping neighborhoods, and sustaining the very fabric of our economy. YOU are ESSENTIAL.

Stay strong. Stay focused. Stay determined. The road ahead may be uncertain but know this — you're not alone. We have your backs, and together, we will continue to make a difference.

Keep pushing forward. Your resilience and dedication are what make this industry thrive. We honor you. We stand with you.



A stylized, handwritten signature of "Darryl Davis" in black ink. To the left of the signature is a circular icon containing a microphone, suggesting a podcast or audio recording.

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Disclaimer

The information provided in this guide is intended for educational purposes only and should not be considered legal advice. Lawsuits and legal matters are constantly evolving as new information and precedents emerge. While we strive to ensure the content is accurate at the time of publication, we strongly recommend that you consult with your legal counsel and follow your state laws and brokerage policies for any specific legal advice or guidance.

Please note that this field guide is not a training manual but a supplemental reference guide. It was originally designed for attendees of our webinar training or live events. However, we decided to make it available to all REALTORS® at no charge. For more in-depth training on this topic, please visit www.NARLawsuit.com.

Additionally, any reference to specific percentage numbers or commission rates within this guide is presented solely as hypothetical examples. We are not engaging in or promoting price-fixing practices. As real estate professionals, you understand that all commission rates and fees are fully negotiable between clients and REALTORS® and are not mandated by any state or federal laws.

What Agents and Leaders Are Saying:



I've been a POWER AGENT® for a few weeks now. Darryl has made the NAR lawsuit clearer than any other training I've been in. He gives me a feeling of confidence, professionalism, and motivation. I'm so happy I joined. - Deborah Key, Power Agent®, C.R. Realty

Because of Darryl and his team, we are so well-informed about the Lawsuit. Darryl is so passionate because he cares and always wants to protect us. - Kathleen Turner, Power Agent®, Property Choices Real Estate

As a broker and owner of an agency for over 25 years, I have listened to dozens of instructors, trainers, and so-called experts. Darryl was the only one I sought out last Fall when this lawsuit came about. I am now a POWER AGENT® and look forward to the weekly training. - Shirley J Dabringhaus, Power Agent®, Sunset Realty

I have been a POWER AGENT® since before the NAR issue. Darryl has been fantastic in presenting all aspects of this. - Grace Slezak, Power Agent®, Destiny Intl. Realty

Darryl's guidance through this lawsuit has helped a great deal. His explanations are so much more relatable than anything else I have listened to or read. - Kathleen Carroll, Power Agent®, Berkshire Hathaway HomeServices Strouffer Realty

We have confidence in dealing with the new mandates because Darryl has given us what is needed since last October! Thank you!!! - Bob & Joyce Grinewich, Power Agents®, Howard Hanna WNY Inc.

I have learned so much from Darryl Davis. I couldn't go through these NAR changes without his coaching. - Irene Lopez, Power Agent®, HomeLife Platinum Realty

I am absolutely more confident about the changes with NAR. I love how Darryl has explained this and has empowered me to explain it all to my clients. - Barbara Patterson, Power Agent®, Kaze Realty LLC

The NAR training has been fantastic with all the information and confidence I have received from Darryl and his team. I am so far ahead of all the other agents. Thanks so much! - Lori Click, Power Agent®, Century 21 American Way



Darryl Davis Live
**NAR Settlement
MASTERCLASS**

ROCK THE NEW RULES!



Transparency



Compensation



Consumer Choice



MLS Changes



Representation

**Your Roadmap to Moving
Forward Starts Here!**

**Master the NAR Settlement
with Confidence**

LIVE EVENT –

FRIDAY, SEPTEMBER 13, 2024

Long Island Marriott, Uniondale, NY

**LIMITED
SEATING**



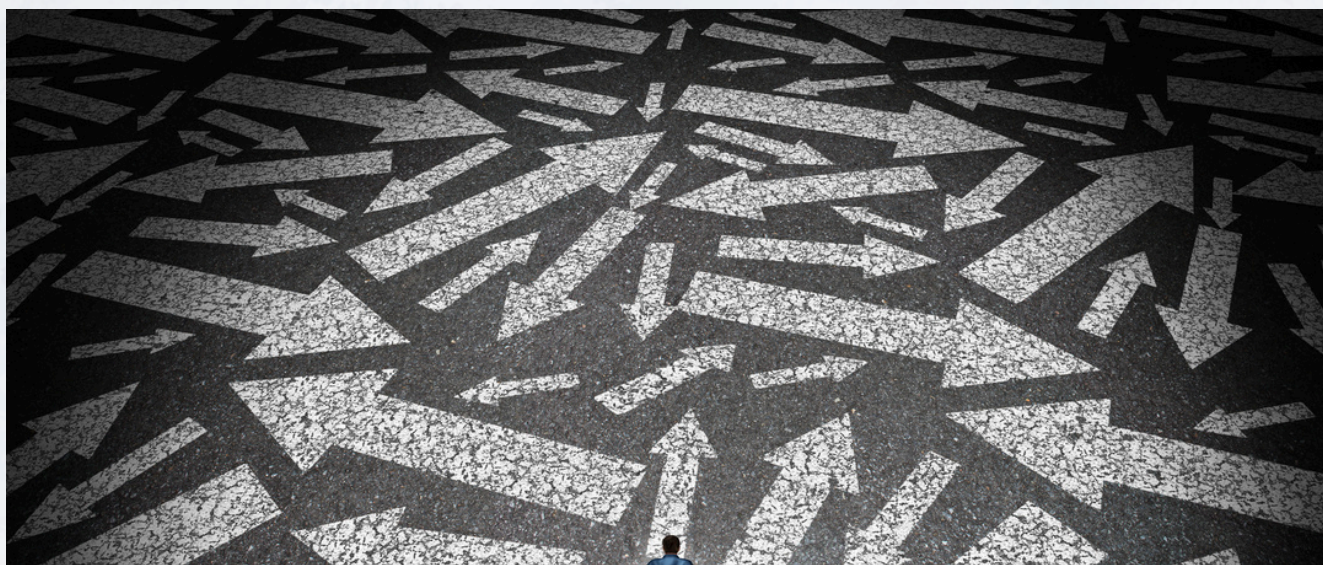
Learn More at NARMasterClass.com

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Introduction



Confusion and **uncertainty** can be a deal-breaker for any business, and real estate professionals have had much more than their fair share of both in the aftermath of National Association of REALTORS® (NAR) lawsuit and settlement. We see and hear the struggle from agents across the country. We know what you are going through, which is why we've worked so hard as an organization to put the right resources, tools, and training in your hands every step of the way through this transformative time in our industry.

What we've done is to take everything we've learned, taught, and cultivated on this topic and brought it all together to create this field guide to help agents and leaders find clarity in regards to this lawsuit and settlement. Our goal is to deliver to you the strategies and solutions that should be put in place to adjust your mindset and business practices to keep moving forward with more confidence.

I really want to convey that **confidence** is the big key here. If you're unsure or hesitant when speaking to a buyer or seller, they'll sense it immediately, and it could cost you the listing, or the sale. We hope to erase some doubts, give you the tools to feel more empowered, and to help you stand tall and assured in every interaction. We know that if we can help you better understand the concepts and skills you need to feel more CONFIDENT about what you are talking about when interacting with home buyers and sellers, then you'll come out of this stronger and with the ability to build a solid business.

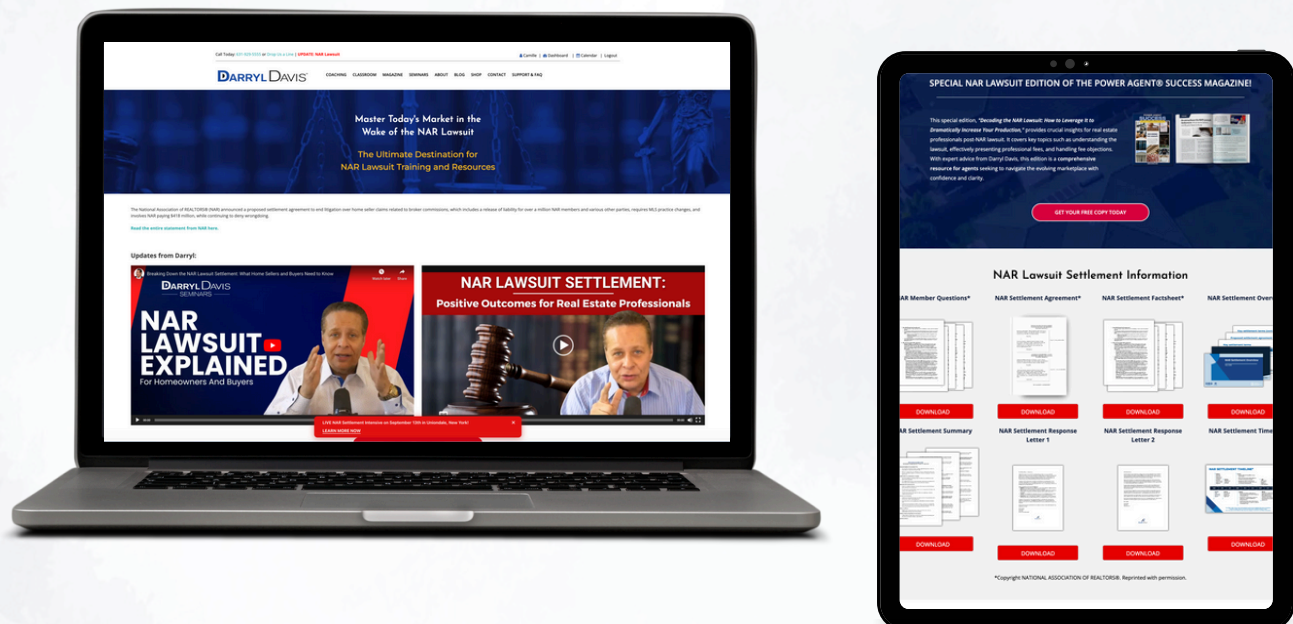
I do want to take a moment to thank not only my team for their hard work to put this comprehensive guide together for you – but also all of our POWER AGENT® Members and training attendees. It is because of your participation, your eagerness to learn, your earnest questions, and your commitment to what's possible that has made THIS possible. So, thank you!

Now, there are a LOT of legal documents to wade through that we included in a resource hub (www.NARLawsuit.com) for you such as:

- The NAR Settlement Agreement
- NAR Fact Sheet
- NAR Settlement Summary
- NAR Settlement Overview

We didn't want you to get too bogged down or lost in the minutia of all the legalese right out of the gate because, truly, it's hard to get through. Instead, we put them at the end of the guide for you to use as reference material.

As a service to you, I did a lot of the legwork for you. I have run all the legal documents through a specialized AI tool that I have specifically trained on all things NAR Lawsuit and Settlement and it has helped me to create a powerful summary of what it all means to you.



Darryl's NAR Lawsuit and Settlement Summary



Two Powerful Truths

1. **You DO NOT have to use your association's forms.** Consider them as templates for you to customize. However, whatever your final form is, you must get your broker to agree to it.
2. State's License Laws may conflict with the settlement. **Make sure you KNOW your state's law regarding agreements and representation.** State license law ALWAYS supersedes association rules and the NAR settlement.

For The Listing Agent

- When you are the listing agent, you can still **take the same full professional fee as before**, AND you can still pay the selling broker; you just can't put on the MLS (and we recommend not putting a selling broker commission anywhere, even your own website) what that selling fee is.
- As a listing agent, based on the requirements of the lawsuit settlement, **you do NOT have to use a different listing agreement form.** However, there is one change you must make and make sure the form states the following:
 - THE OWNER UNDERSTANDS BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REAL ESTATE ORGANIZATION AND IS NEGOTIABLE BETWEEN OWNER AND THE LISTING BROKER.

For The Selling (Buyer's) Agent

- In order for you to find out if the listing agent is paying a fee, you will need to contact them. But in my opinion, that is a waste of time to do upfront. You should not worry about that until the buyer finds a house that they even want to put an offer on. **That's when you can find out if there's a fee being paid by the seller or the listing agent, and then negotiate that with the rest of your offer.**
- **Before you can show a buyer a house, you must sit down with them and explain your Buyer Agency Agreement.** Your agreement can be an exclusive contract for the buyer to only work with you, or it could be an agreement that only pertains to the houses you show that buyer, giving them the freedom to work with other agents. Your agreement must contain the following:
 - THE BUYER UNDERSTANDS BROKER COMPENSATION IS NOT SET BY LAW OR BY ANY REAL ESTATE ORGANIZATION AND IS NEGOTIABLE BETWEEN THE BUYER AND THE BROKER.
 - The selling agent's professional fee must be disclosed as a specific amount and not open-ended (e.g., it cannot be "whatever the seller offers"). The selling agent **cannot collect more money than is listed in the agreement**, but they can always take less than what was listed in the agreement.
 - Include a statement that MLS Participants may not receive compensation from any source that exceeds the amount or rate agreed to with the buyer.



A word about bonuses and incentives from listing agents or sellers to the buyer's agent.

The NAR settlement has essentially done away with bonuses from builders and anything that is open-ended. Here are two sections of the NAR Settlement Agreement that basically does away with bonuses:

Specific Disclosure and Agreement Requirement:

The settlement requires that all compensation to buyer agents must be specified and conspicuously disclosed in the buyer agency agreement. The amount must be objectively ascertainable and not open-ended.

Prohibition of Excessive Compensation:

Agents cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

Additional compensation could not be accepted without being part of the initial, clearly defined agreement. The settlement mandates that the total compensation must be agreed upon upfront and should not include open-ended or additional amounts unless they are clearly disclosed and agreed to by the buyer from the beginning.

This statement would comply with the settlement, but as you can tell, you cannot add an open-ended bonus from sellers:

"All compensation to the buyer's agent, including any bonuses or incentives from the seller or listing agent, must be fully disclosed and agreed upon in this agreement. The total compensation will be the amount specified here, and no additional compensation will be accepted unless it is included and agreed upon in this written agreement."



Simplifying the Settlement Points

Let's break down some essential guidelines in a straightforward manner. Trust me, if I can understand them, so can you!

Here's what you need to know:

- **No Filtering Based on Fees:** The first point in our settlement states that listings cannot be filtered based on fees. This ensures transparency and fairness in our listings.
- **Compensation Disclosure:** Listing agents cannot offer compensation to buyer's agents through MLS or non-MLS platforms. We'll explore this further later on.
- **No "Free" Commission Claims:** It's crucial never to claim that your professional fee is free. Misleading statements can lead to significant legal issues.
- **Printed Statements on Fees:** You must have printed statements indicating that fees are negotiable and not set by law. This should be on all your forms.
- **Buyer Agreements:** Buyers must sign an agreement before you show them houses. This formalizes the relationship and sets clear expectations.
- **Continuous Training:** REALTORS® are required to attend training regularly. This is vital for staying updated and compliant. Save your receipts for any training sessions, webinars, or live events you attend as proof of your commitment to professional development.

Practical Implementation

Now, let's simplify this even further. The only real actions you need to focus on are:

- Ensuring you disclose the negotiability of your professional fee clearly in all agreements. Use a tiered plan to present your fee options.
- Having buyers sign agreements before showing properties.
- Continuously attending and documenting your training sessions.


It's that simple! As a matter of fact, I could end this chapter here, but let's delve a bit deeper for clarity.



POWER AGENTS® – Watch STOP Telling Clients Your Commission Is Negotiable! Webinar to get a handle on how to communicate professional fees in these changing times.



Disclosure

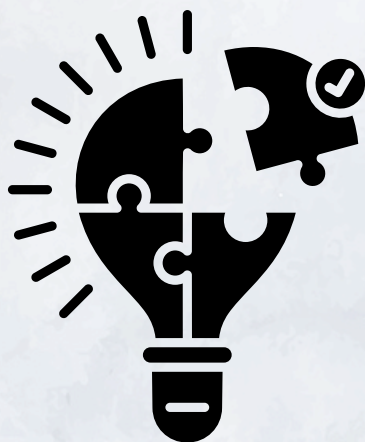


Importance of Disclosure

One of the settlement's critical requirements is that MLS participants must disclose to both sellers and buyers that broker commissions are not set by law and are fully negotiable. This needs to be clearly stated in all listing agreements, buyer agreements, and pre-closing disclosure documents.

Avoiding Miscommunication

Some agents mistakenly tell clients verbally that fees are negotiable. This can lead to confusion and misinterpretation. Instead, ensure that this information is printed and included in all relevant documents. This approach simplifies the process and ensures compliance without unnecessary complications and adds a powerful layer of transparency that is crucial moving forward.



Handling Opinions and Information

In our profession, everyone has an opinion. You'll find countless views on social media and within the industry. My advice? Don't get swayed by every opinion. When in doubt, call your Department of Licensing. Document your conversations and follow up with an email to confirm details. This creates a paper trail and ensures you have accurate, reliable information.

The Pyramid of Authority

In our profession, it's crucial to know whose guidance to prioritize:

1. **Higher Power:** Your ultimate source of guidance.
2. **Parents:** Your foundational support.
3. **Spouse:** Your immediate partner in life (sometimes this might switch with your parents depending on the situation).
4. **Department of Licensing:** Your regulatory authority.
5. **Broker:** Your professional partner in business.
6. **Everyone Else:** This includes me, your association, and industry experts.

Higher Power

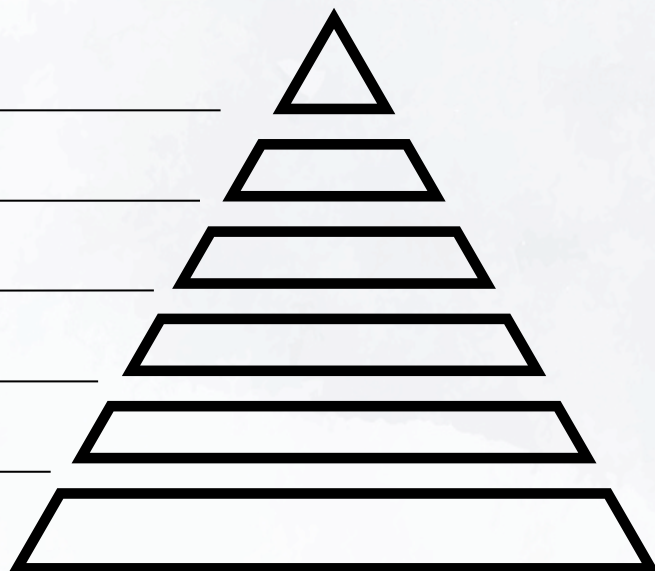
Parents

Spouse

Department of Licensing

Broker

Everyone Else





Understanding Your Role: Salesperson vs. Professional

A key distinction in real estate is between a salesperson and a professional. Unlike salespeople in other industries, real estate professionals have a fiduciary responsibility. This means we are legally and ethically bound to act in our clients' best interests.

Fiduciary Responsibilities

Even in states that do not explicitly label us as fiduciaries, we still hold a fiduciary duty. This involves placing our clients' interests above our own, similar to the responsibilities held by attorneys and accountants.

Elevating Our Profession

It's vital to elevate how we perceive ourselves and how others perceive us. We are not mere salespeople; we are licensed professionals. This distinction is crucial for building trust and maintaining high standards in our industry.



Most Common Questions from REALTORS® (According to NAR)

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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
 - 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.

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 Sitzler-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.
- **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).
- **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 representation agreements with their buyers.
- **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's membership dues for 2024 will not change 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.

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.



POWER AGENT® PRO TIP – Eager to be the agent in your market that offers COMPLETE transparency and advocacy? This guide is perfect! Check it out [here!](#)

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.

By changing the cooperative compensation policy, aren't you admitting that it was problematic?

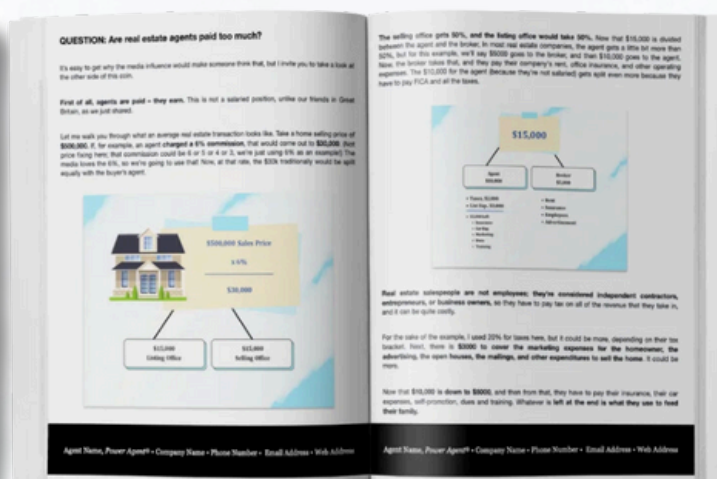
- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the Multiple Listing Service (MLS) cooperative compensation model rule (MLS Model Rule).
- NAR has long maintained — and we continue to believe — that cooperative compensation and NAR's current policies are 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.

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).

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.



POWER AGENT® PRO TIP – One of the best guides in the business to help break down the complexities of the lawsuit and settlement into simple, easy-to-understand terms for home buyers and sellers. It offers answers the most asked questions from consumers - and makes you look like a hero! Check it out [here!](#)



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.
- Additionally, we have agreed to require MLS participants working with buyers to enter into written representation agreements with their buyers.

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.

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.

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.



POWER AGENT® PRO TIP
– Find these simple, easy to read trifold brochures for buyers and sellers in the NAR Hub of the classroom! They are great conversation ice breakers!



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 Sitzler-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.

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.

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.

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.

BUYER AGENCY AGREEMENT

This Agreement, dated [Date], is entered into between [Buyer's Full Name], hereinafter referred to as the "Buyer," and [Broker's Full Name], a licensed real estate agent, hereinafter referred to as the "Agent."

The following professional fee was negotiated between the Agent and the Buyer. Real estate commission rates are not set by state or federal law but by the individual agent and brokerage.

FEES FOR SERVICE: The Buyer agrees to ensure that the Agent is paid a fee in the amount of _____ percent _____ % based on the final sales price of any property the Buyer purchases during the term of this Agreement.

METHOD OF PAYMENT: The Agent will make every effort to have the fee included in the contract price of the property. If this inclusion is unsuccessful, the Buyer agrees to pay the fee at the closing of the property sale.

SCOPE (check one):

☐ This Agreement applies regardless of whether the Buyer purchases the property through the Agent, directly from a homebuilder, or through another real estate agent.

☐ This Agreement only applies to homes the "Agent" discusses with the "Buyer"

TERM: This Agreement shall be in effect for a period of _____ months from the date of signing.

TERMINATION: Should the Buyer or the Agent wish to terminate this Agreement before the end of the term, written notice of at least thirty (30) days must be given. Both parties must be in agreement to terminate this agreement.

GOVERNING LAW: This Agreement shall be governed by the laws of [Your State/Province/Country].

ENTIRE AGREEMENT: This document contains the entire agreement between the Buyer and the Agent and supersedes any previous understandings, written or oral, relating to the subject matter of this Agreement.

AMENDMENTS: Any changes or modifications to this Agreement must be in writing and signed by both parties.

BUYER:
Signature: _____ Date: _____
Signature: _____ Date: _____

AGENT:
Signature: _____ Date: _____
Signature: _____ Date: _____

Buyer's Agent Professional Fee Invoice

1. **Identity of Parties.** This Buyer Brokerage Professional Fee Agreement is entered into as of the date of the last signature herein, by and between:
the "Listing Brokerage", _____
(the "Listing Brokerage") and
(the "Buyer Brokerage") _____
(hereinafter Buyer, whether one or more than one)

2. **Identity of Property.** Buyer Brokerage is representing a buyer who is contemplating making an offer, has made an offer, or has entered into a contract to purchase or lease the following real property described as follows: _____

3. **Fee Arrangement.**
In this transaction, the amount of Buyer Brokerage compensation shall be as follows (if left blank, the amount shall be zero):
(a) Seller agrees to pay _____ % to Buyer's Brokerage.
(b) Listing Brokerage agrees to pay _____ % to Buyer's Brokerage.
(c) Buyer agrees to pay _____ % to Buyer's Brokerage.
Total Buyer Brokerage Compensation ((a)+(b)+(c)) shall be: _____ %
Any fees or compensation arising from a real estate licensee's licensed activities shall be made payable to the appropriate brokerage and paid at or before the closing as defined in the purchase agreement. All parties to this Agreement agree that this document shall serve as irrevocable escrow instructions for the payment of the brokerage fees.

BUYER:
Signature: _____ Date: _____
Signature: _____ Date: _____

AGENT:
Signature: _____ Date: _____
Signature: _____ Date: _____

Real Estate Professional Fee Closing Statement

This Agreement, dated [Date], is entered into between [Seller's Full Name], hereinafter referred to as the "Seller", [Buyer's Full Name], hereinafter referred to as the "Buyer", [Seller's Brokerage Name], hereinafter referred to as the "Seller's Brokerage", and [Buyer's Brokerage Name], hereinafter referred to as the "Buyer's Brokerage".

The following professional fees were negotiated between the Agent and the Buyer and/or Seller. Real estate commission rates are not set by state or federal law, but by the individual agent and brokerage.

PROPERTY DETAILS:
Address: [Property Address, including any additional details like city, state, and zip code]

PROFESSIONAL FEE DETAILS:
a. **Listing Brokerage Professional Fee:**
The Seller agrees to pay the Listing Brokerage a fee of _____ % of the final sales price of the property.

b. **Selling Brokerage Professional Fee:**
The Buyer agrees to ensure the payment to the Selling Brokerage a fee of _____ % of the final sales price of the property. This can be included in the contract price of the property as a seller's concession, an incentive paid directly from the seller, or paid separately by the Buyer.

TOTAL FEE: The total fee to be paid, based on the sales price of the property, is calculated as: _____ %.

DISCLOSURE: Both parties, the Seller and the Buyer, acknowledge and understand the Professional Fee structure outlined above and confirm that these percentages have been disclosed, understood, and agreed upon.

GOVERNING LAW: This Agreement shall be governed by the laws of [Your State/Province/Country].

ENTIRE AGREEMENT: This document contains the entire agreement between the parties involved and supersedes any previous understandings, written or oral, relating to the subject matter of this Agreement.

AMENDMENTS: Any changes or modifications to this Agreement must be in writing and signed by all parties involved.

HOUSING/REALTOR:
Signature: _____ Date: _____
Signature: _____ Date: _____

BUYER:
Signature: _____ Date: _____
Signature: _____ Date: _____

AGENT:
Signature: _____ Date: _____
Signature: _____ Date: _____



POWER AGENT® PRO TIP – Simplify your agreements with our easy-to-customize forms and documents that clear out the legal clutter while still being compliant. Download yours in the [NAR Lawsuit hub here!](#)

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.

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.

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.

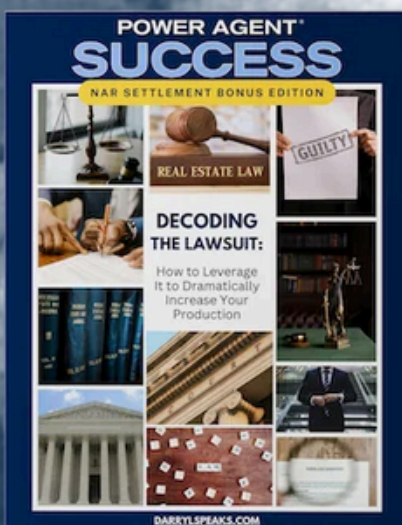
- This is consistent with NAR's long-maintained position that prohibiting all offers of cooperative compensation entirely would harm consumers and be inconsistent with real estate laws in the many states that authorize them.
- We believe this agreement provides a path forward for our industry and NAR.

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.

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.



Did you know that we dedicated an entire special edition of our POWER AGENT® SUCCESS Magazine to the lawsuit and settlement? Get your free copy today!

Are institutes, societies, and councils affiliated with NAR included in the release in the settlement agreement?

- Yes.

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.
- They will have 60 days to execute the appendix.

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.

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

- We can expect the process of court review to take several months or more.
- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.

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.



POWER AGENT® PRO TIP – In this powerful guide, we break down the complex concepts of the rulings into easy-to-explain dialogues that you can practice and adopt so that you can have **CONFIDENT CONVERSATIONS** around this topic without feeling unsure or unsteady!



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.

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 Sitzler-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 Sitzler-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.

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.



POWER AGENT® PRO TIP – They say a picture is worth 1,000 words, but the right visual, especially when discussing your professional fee, can be worth thousands of dollars. Use the Tiered Marketing Plan and Performance Based Fee Pyramid to show value and worth.

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.

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.

What does this settlement mean for NAR advocacy efforts? Is there still funding available for those efforts?

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- 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.

Will NAR raise dues or levy an assessment on members to fund the settlement?

- NAR's membership dues for 2024 will not change because of this payment.

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.

“Darryl and his team have been preparing us for this day since November 2023. POWER AGENTS® are not surprised at all by announcements. We were prepared and ready to go!!”

Kathleen Turner, POWER AGENT®
Property Choices Real Estate

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.

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.

How would this prohibition affect pending transactions?

- The practice changes will go into effect August 17, 2024

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 representation 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.



“We’ve been light years ahead of our fellow agents with lawsuit awareness now for months with these sessions, more empowered by each one. This program keeps your mind positive and ready to go.” -

Mark Schilling, POWER AGENT®, Beach Realty NAR



- 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.

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.



POWER AGENT® PRO TIP – From mastering the professional fee conversation to pricing property in this crazy market to steering clear of legal landmines, you'll find all the in-depth training you need to have clarity, be compliant under the new rules, and feel more CONFIDENT in every phone and face-to-face conversation with buyers and sellers.



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.

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 pre-determined 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.
- All agreements reached through this mechanism would be subject to court approval.

“

“I just attended a webinar by Darryl Davis about buyer's agency after the NAR settlement. I am a REALTOR® with Century 21. Darryl Davis is very knowledgeable and researched this even before it was settled. He presented us with how agents should proceed with our sellers and buyers. I highly recommend Darryl Davis and his program!”

- Don Schmidt, POWER AGENT®, Century 21 Ace Realty

”

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.
- Non-association MLSs can also choose not to participate in this settlement.



POWER AGENT® PRO TIP:
Members, find your copies of these
powerful tools in your Classroom!





Power Agent® Perspectives: Your Top Questions Post-NAR Settlement

Following the National Association of REALTORS®' release of the most common questions they received after the settlement, we recognized the importance of capturing the unique concerns of our own community. While the NAR provided a broad overview, we knew that our POWER AGENT® members—those on the front lines of real estate—might have specific, pressing questions that reflect the realities of their day-to-day business. To ensure you're equipped with the insights you truly need, we polled our members to gather their top inquiries. In this section, you'll find the most critical questions asked by your peers, addressing the issues that matter most as we navigate this new chapter together.

LICENSING and INDUSTRY

Does this settlement apply to rentals and commercial real estate?

- No. These rules only pertain to residential real estate.

Does this settlement apply to my state licensing laws?

- While the core principles we discuss are generally applicable, every state has its own specific license laws that can potentially supersede or conflict with the settlement terms. Become well-versed in your state's license laws, especially regarding agency.

What should you do if your state license law says something different from the settlement?

- Become familiar with the licensing laws in your state so you are able to differentiate between the truth and misinformation and represent the terms of the settlement correctly to your clients and other agents. For example, the laws around buyers signing the Buyer Agency Agreement. Ask your state licensing board for clarification on anything you aren't certain about.

Aren't we just salespeople?

- Absolutely not! Real estate agents are professionals with fiduciary responsibilities, akin to lawyers and CPAs. Our commitment is to our clients' best interests, not merely making a sale. This professional ethic is what distinguishes us from typical salespeople. Salespeople have customers, professionals have clients.
- To support your practice, we've created a guide explaining the recent lawsuit and its implications for buyers and sellers. This guide can help you educate your clients and dispel any myths they might have encountered.
- Our ***"184 Things Real Estate Agents Do"*** list is a powerful tool for showcasing the value you provide. We also have the 40 Things a Buyer's Agent Does to Earn Their Professional Fee. Read them before your listing or buyer appointments to boost your confidence and articulate your worth effectively.

Do we have to use approved state or local board forms?

- There are no such thing as mandatory, legally approved forms. You have the flexibility to create any form that suits your business model.
- While I'm a big supporter of NAR and our associations, it's important to know that you're not legally obligated to use these forms. However, your broker must approve any forms you decide to use.

If you don't use your state form, will E&O insurance still cover you?

- Yes, E&O (Errors and Omissions) insurance will still cover you even if you don't use your state's specific forms. State forms are recommendations, not requirements, except for the contract for the sale of real estate, which usually needs to be approved by an attorney.
- Business-to-consumer agreements, such as listing agreements or buyer agency agreements, can be written on any document, even a napkin! However, it's a good practice to get your E&O company or sales rep to sign off on your agreements to ensure full coverage and avoid any potential issues.

Do you think NAR will ever change the title from salesperson to something else?

- While I can't predict if the National Association of REALTORS® (NAR) will officially change the title from "salesperson" to another term, it's possible for us as individuals and as a collective to influence such a change.
- For example, the term "buyer love letter" became widely used because I started teaching and promoting it. Similarly, if we consistently refer to ourselves as professionals rather than salespeople, we can shift the perception and terminology within the industry. Change often starts with grassroots efforts, and collectively, we can advocate for a more accurate and respectful title.



Do we need to state "licensed salesperson" on our business card?

- This requirement can vary depending on state laws.
- It's crucial to verify this information rather than assuming you know the law. You should contact your state's department of licensing or review the licensing regulations directly. If your state requires "licensed salesperson" to be on your business card, you must comply.
- However, in your verbal communication and written materials, you can present yourself as a professional and avoid terms like "salesperson" and "commission," instead using "fees" and "professional" to elevate the perception of your role.

Can you explain how this affects sales models for new construction? Should we treat it the same as the public open house?

- Yes, for new construction, it's treated just like a public open house. When potential buyers come to tour the new construction models, they don't need to sign any agreement beforehand. This approach simplifies the process for both the buyers and the agents, making it easier to manage the tours and interactions.
- If a buyer walks in without buyer representation, they don't need to sign a buyer agency agreement before touring the models. It is understood that you, as the seller's agent, are representing the seller.



What happens to an agent or client who wants to sue you? Do you go to civil court or through NAR?

- If someone wants to sue you, you need to hire your own attorney and go through the civil court system. The National Association of REALTORS® (NAR) is not a legal organization and does not handle lawsuits. Attempting to involve NAR in legal matters can lead to complications, so it's best to seek legal advice and representation from a qualified attorney.

How does this situation offer an opportunity to strengthen relationships with current clients?

- This situation offers an opportunity to strengthen relationships with clients by initiating important conversations and formalizing agreements.
- For **buyers** who haven't signed an agreement yet, this is the perfect time to explain the benefits of a buyer broker agency agreement and get it signed.
- For **sellers**, discussing the need for an addendum and potentially extending the listing period shows your dedication to protecting their interests and managing their listing effectively.
- These actions demonstrate your professionalism and commitment to your clients, which can lead to stronger, more trust-based relationships.

How should you handle a situation where you have both a buyer and a seller client, and one wants to see the other's agreement?

- In such a situation, you should not share the agreements between clients. Any agreements and information shared with you by one client should remain confidential and not be disclosed to the other client. This includes buyer agency agreements and listing agreements.
- Ensuring confidentiality and maintaining professional boundaries are crucial to managing dual agency situations effectively and ethically.

Is there a set percentage an agent should take out for taxes?

- There isn't a universally set percentage, as it depends on your individual tax rate and financial situation. The 30% mentioned in a recent call is a conservative and safe approach. It's always best to consult with a tax professional to determine the appropriate percentage to set aside for your taxes based on your earnings and tax bracket.

Why are some brokerages making the seller pay the buyer agency directly instead of the listing agent sharing their fee? What's the difference?

- Some brokerages are adopting this approach to potentially reduce liability and avoid future lawsuits. By having the seller pay the buyer's agent directly, they remove the listing agent from the fee-sharing equation. We agree. From now on, Listing Agents should not pay the Buyer's Agent.

What about net listings in certain states?

- Net listings are defined differently in various states, and some states prohibit them altogether. It's essential to understand your specific state's regulations regarding net listings. If you're in a state where net listings are allowed, ensure you follow the legal requirements and clearly define the terms to avoid any misunderstandings or legal issues.

Can you link your personal website with the fee on the MLS?

- As an industry, we've been trying to figure out how we can still communicate to the buyer's agent what percentage the seller is willing to pay, but this goes directly against the spirit of the lawsuit settlement. It was intended to prevent seller's committing to a set % before negotiations have begun. To protect yourself from liability, DO NOT advertise what the seller is willing to pay...let the buyer agent make their request through the buyer's offer and then it can be discussed.

As a Broker/Owner, how should I explain these new processes to my agents?

- It is essential to stay informed about the latest regulations and ensure your agents are educated. Start by clearly explaining the new processes and the reasons behind them.
- Provide detailed training sessions and create resources or guides that your agents can refer to.
- Encourage open communication, allowing your agents to ask questions and express concerns.
- Emphasize the importance of compliance with state laws and regulations.
- Additionally, recommend that your agents contact the Department of Licensing for verification and clarification on any legal matters.
- Support your agents through this transition by offering continuous education and resources.

Can you do a payout agreement with other brokers in a letter form ahead of time?

- While it is technically possible to create payout agreements with other brokers in advance, it is often impractical and time-consuming to do so for each listing. Instead, establish a clear and consistent fee structure for your services when working with buyers. This approach ensures that your compensation is straightforward and can be negotiated within the offer if necessary. Focusing on a standardized fee structure simplifies the process and ensures that you are adequately compensated for your work.

Does REBNY adhere to the NAR rules?

- No. The Real Estate Board of New York (REBNY) is not a member of the National Association of Realtors (NAR) and operates independently. REBNY has its own set of rules and regulations.
- Prior to the recent settlement, REBNY had already implemented a policy requiring that the selling fee be paid directly by the homeowner, not the listing broker. This move influenced other companies, like EXP, to adopt similar practices..





Do you think dual agency will be done away with, considering there may be fewer buyer agents?

- If there were fewer buyer agents, theoretically, there would be more dual agency situations. I am a proponent of dual agency because I believe it can benefit both buyers and sellers by having one agent manage the transaction. This approach can streamline communication, reduce misunderstandings, and enhance overall efficiency.
- While some agents avoid dual agency due to concerns about maintaining integrity and representing both parties fairly, proper training and ethical practices can address these concerns effectively.

My office met with a local bank's mortgage department, and they stated they need a copy of the buyer agency agreement for underwriting. Is this normal?

- While this isn't a standard practice everywhere, it seems to be a requirement for that particular bank. It's essential to comply with their request if it's a requirement for processing the mortgage, however, your agreement with your client is confidential. In many cases you would be breaking your fiduciary responsibility in sharing that with anyone. Banks and mortgage professionals could be an exception.

Questions From The BUYER Side

Do you need buyers to sign a buyer's agreement at an open house?

- Open houses are open to the public, meaning anyone can attend. The settlement agreement regarding buyer agency contracts does not apply to open houses. To protect yourself, we've created an **Open House Visitor Registration Disclosure Form**. This form ensures transparency and protects you from potential legal issues.
- **Example Disclosure Form:**
 - **Representation:** Buyers indicate if they're currently represented by an agent.
 - **Agent Declaration:** You declare your role as the seller's agent and clarify that you're providing information during the open house.
 - **Option for Representation:** You offer the option for buyers to enter into a representation agreement with you.
 - **Professional Fee Negotiability:** It states that all professional fee rates are negotiable and not set by law.

POWER AGENT®
PRO TIP – Find this
powerful Open House
Visitor Registration
Disclosure Form in the
NAR Hub of your
Classroom here.
www.NARLawsuit.com

Open House Visitor Registration and Disclosure Form

Property Address: _____

Hosting Agent: _____ Date: _____

Visitor Information

Name: _____

Email: _____ Phone: _____

Representation Status

Please INITIAL the appropriate box:

- ☐ I am currently represented by a real estate agent.
- ☐ I am not currently represented by a real estate agent.

Agent's Name: _____ Brokerage: _____

Disclosure

1. Seller's Agent Role:
a. I, [Your Name], am the seller's agent for this property and represent the seller's interests. I am here to provide information and answer questions during this open house.

2. Buyer Representation Options:
a. If you are not currently represented by an agent and are interested in purchasing this property, you have the option to enter into a buyer representation agreement with me for personalized assistance and negotiations.

3. Commission Negotiation:
a. All commission rates are negotiable and are not set by law. Any agreement on compensation will be discussed and agreed upon in a formal buyer representation agreement.


4. Privacy and Confidentiality:
a. Your information will be kept confidential and will only be used to follow up on your interest in this property.

Acknowledgment
By signing below, I acknowledge that I have read and understood the above disclosures and information. I understand that the seller's agent is representing the seller's interests and that I have the option to seek my own representation.

Visitor's Signature: _____ Date: _____

Next Steps for Unrepresented Buyers
If you are not currently represented and are interested in discussing buyer representation further, please let me know. I'd be happy to explain how I can assist you in purchasing this or any other property. Note: This form is intended for informational purposes and does not constitute a formal agreement. Please reach out to your own agent or me if you have any questions about representation or the home-buying process.

Agent Name, Title • Company Name
Phone Number • Website • Email Address



If the buyer does not have the money to pay me, what do I do?

- It's straightforward: if the buyer doesn't have the money, they don't buy the house. Ninety-five percent of the time, the transaction will proceed as usual, but in the rare case (about 5%) where they may need to cover 1-2%, if they can't, the deal doesn't move forward.
- The seller might initially refuse to pay the fee, but as they start losing buyers, their stance may change.
- The key is not to worry about these situations until they arise.

Can I place the buyer agency fee on other websites like MyStateMLS.com?

- No. However, these 3rd party websites will tell you that you can because they were not part of the settlement and didn't make any agreements with the plaintiffs, but the fact is, as a NAR member, YOU did, so doing so opens you up to legal troubles.

If my buyer agrees to pay 2% and the seller is paying 3%, can I get the full 3%? What about bonuses?

- While you can amend the agreement if the seller offers more, doing so can make you appear solely money-driven and greedy. To maintain trust and professionalism, your fee should be consistent and transparent from the beginning. Additionally, changing the agreement goes against the spirit of the settlement and could put you in hot water. Therefore, your fee should remain fixed regardless of the circumstances, and you should not change it on a per-deal basis.

As a listing agent hosting an open house, if contacted by an unrepresented buyer who wants to place an offer through me, the listing agent, what paperwork needs to be presented to the buyer and what contracts, if any, need to be signed by the buyer?

- In this scenario, you need to have a detailed conversation with the buyer about their intention to place an offer. If you cannot have this conversation during the open house, you should arrange to meet them at another time.
- The buyer needs to sign a buyer agency agreement if you are going to act as a dual agent. If they don't, then they are not a client but a customer
- If your state allows dual agency, a dual agency form should be signed by both the buyer and the seller, acknowledging and agreeing to your role as a dual agent. This ensures transparency and legal compliance in your representation of both parties.

Does this mean that a buyer can represent themselves in a purchase of an MLS listing and release the liability from the broker who is representing the seller under an exclusive listing?

- Yes, a buyer can choose to represent themselves in the purchase of an MLS listing. In such cases, they will deal directly with the listing agent. It's up to the listing agent and the seller to decide how to handle this situation.
- The seller can insist that any unrepresented buyer must work with the listing agent as a dual agent. This approach ensures that the listing agent can guide the buyer through the process, thus protecting the seller and reducing the risk of liability issues.

How would a seller protect themselves if a buyer decides to represent themselves?

- Brokers can protect their clients by including specific clauses in the listing agreement. For example, the agreement can state that it is not advisable for a seller to accept offers from unrepresented buyers.
- The seller can be encouraged to require that any unrepresented buyer works with the listing agent as a dual agent. This ensures that the listing agent can properly manage the transaction, reducing the risk of errors or misunderstandings.
- Having clear documentation and ensuring that all parties understand their roles and responsibilities can help mitigate potential liability.



Do we need to stop the auto search for previous buyers who have been loyal but never signed a buyer broker agency agreement until they sign one?

- Yes, you should stop the auto-search for these buyers until they sign a buyer broker agency agreement. It's important to sit down with these buyers and explain the necessity of having a formal agreement in place. This will not only protect you as an agent but also clarify the relationship and expectations for the buyer.
- You should also ensure that your current listings have an addendum to clarify the selling fee. Using standardized documents, which can be customized to suit your needs, will help ensure compliance and protect your interests.

Can we write on the offer that the buyer will add the buyer agent fee to the loan?

- No, you should not add the fee to the loan. Instead, you should add the fee to the agreed purchase price. For example, if the agreed price is \$515,000 and the fee is \$15,000, the contract price should be \$530,000.
- The contract should clearly state the selling agent's fee and the listing agent's fee as part of the total contract price, ensuring that all parties understand the financial arrangements.

Can a buyer agency agreement specify different fees for new construction, MLS listings, and unlisted properties?

- Yes, a buyer agency agreement can specify different fees for different types of properties. For example, you can state that your fee is 2% for new construction, 3% for MLS listings, and 4% for unlisted properties.
- The key is to ensure that each fee is clearly specified as a fixed percentage or dollar amount, leaving no ambiguity about your compensation structure.



What if a buyer says they won't pay any professional fee?

- If a buyer states that they won't pay any professional fee, you can include a handwritten note in the buyer agency agreement stating that the agent is instructed not to show houses where the homeowner does not pay the fee. However, this approach may require you to contact each listing agent to confirm whether the seller is willing to pay the fee, which can be time-consuming.
- Instead, encourage the buyer to view all potential properties and negotiate the fee with the seller as part of the offer. Explain that this new real estate environment might mean some sellers initially refuse to pay a fee but may change their minds if their property doesn't sell quickly.

Can the buyer broker agreement commission be left blank?

- No, the professional fee in the buyer broker agreement cannot be left blank. According to the settlement, you must specify a specific fee in the buyer agency agreement. This fee must be a fixed number or percentage, not a range, to ensure clarity and compliance with the settlement terms.

Should I worry about buyers going directly to the listing agent?

- No, you shouldn't worry about buyers going directly to the listing agent. Even if they do, they will still have to pay the professional fee to the listing agent, but they won't benefit from having their own representation. The listing agent represents the seller's interests, not the buyer's interest, so the buyer won't receive the same level of service and protection as they would with their own agent.
- Moreover, smart listing agents will still want to get paid on the selling side, meaning the buyer won't save on professional fee costs. It's in the buyer's best interest to have dedicated representation to navigate the complexities of the transaction and ensure their needs are met.

What options do you suggest for a listing agent contacted by a buyer who wants to write an offer in a state that does not allow dual agency?

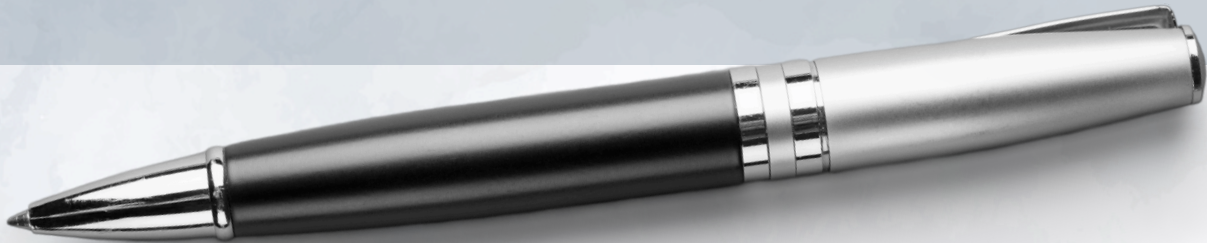
- If your state does not allow dual agency, you should familiarize yourself with alternative options such as designated agency. Designated agency allows different agents within the same brokerage to represent the buyer and the seller separately.
- Check your state's specific regulations by contacting your Department of Licensing or consulting with a real estate attorney. Understanding the legal framework in your state will help you navigate these situations appropriately and provide clear guidance to your clients.

Why can't an agent show houses to a buyer without an agency agreement?

- For agents who are members of the National Association of REALTORS® or work for major franchises involved in the recent lawsuit, it is mandatory to have a buyer sign an agency agreement before showing them a house.
- The only exceptions are if you work for an independent, smaller real estate company that wasn't part of the lawsuit, or if you cancel your membership with NAR, which we DO NOT recommend. This ensures compliance with the new regulations and maintains professional standards.

Does the buyer agreement have to be signed in person, or can it be done digitally?

- You can definitely use digital signature platforms like DocuSign for signing buyer agreements. However, I recommend avoiding DotLoop as it is owned by Zillow, which may not align with the interests of our industry. Using a trusted platform like DocuSign ensures compliance and convenience without potential conflicts.



What if a buyer has signed a Buyer Broker Agency Agreement, and at the closing, they don't pay the fee because they don't have the funds?

- In New York, there is a specific law that addresses this situation. To ensure you get your professional fee, you need to include a clause in the agreement about escrowing the professional fee money. If the buyer cannot pay at closing, the money is put into an escrow account. If the buyer disputes the fee, it goes to court, and the judge decides. If the judge rules in your favor, the escrowed money is paid to you. If not, the buyer gets it back. This clause protects you and ensures that the professional fee is secured despite a dispute.
- If your state does not have some kind of protection like New York, then at the closing table, if everyone knows you are not getting paid despite having an agreement, it becomes an embarrassing situation for the buyer. You should firmly insist on your payment, making it clear that you facilitated the transaction and deserve to be compensated. It's crucial to stand your ground and ensure you receive your professional fee before the closing is finalized.

If another agent hosts an open house for me with the intent of gaining buyers, do they need to have buyers sign a buyer agency contract before touring the home?

- Open houses are open to the public, meaning anyone can attend without prior agreements. The settlement agreement regarding buyer agency contracts does not apply to open houses. However, if the hosting agent meets potential buyers at the open house and later wants to show them other properties, they must have those buyers sign a buyer agency contract before proceeding with any further property showings.

Should I charge a buyer a retainer fee, and how should it be managed?

- If you decide to charge a retainer fee, it must be clearly outlined in your agreement. The agreement should specify the purpose of the retainer, the services provided, and how the retainer will be managed. Typically, a retainer is an advance payment for future services.
- You need to keep detailed records and provide invoices showing how the retainer is being applied to your services. This ensures transparency and accountability. If the matter goes to court, having clear documentation and receipts will be essential.

If the buyer just wants concessions and not to add the buyer fee on top of the offer price, how should this be written up?

- If the buyer prefers to handle the professional fee through seller concessions rather than adding it to the offer price, you can certainly write it that way in the offer and submit it for negotiation.



If a buyer needs seller concessions for closing costs and adds buyer compensation, will this affect the appraisal?

- You don't need to worry about the appraisal being an issue. Adding the buyer's agent compensation to the seller concessions should not create any problems with the appraisal. The appraisal is based on the property's value, not how the closing costs are structured.

At what point do we need to have an agency agreement signed by a buyer?

- If you're engaging in substantial conversations about real estate — such as sending listings, MLS pictures, or having multiple phone conversations — it's clear that you're acting as an agent for this buyer in some capacity.
- Before doing any significant work, you should sit down with the buyer, explain agency, discuss your fees, and have them sign an agreement. This should be the first step with every buyer, except at open houses.
- At an open house, your goal should be to schedule a follow-up appointment in your office to have that conversation and get the agreement signed.

Questions from the LISTING Side

What do I say when my seller asks, “What do I pay if you sell my house to your buyer?”

- Here's a suggested approach to explain your fee structure and how it can vary depending on whether another agent is involved or if you act as both the listing and buying agent. When discussing your fee, inform the homeowner about dual agency. Here's a concise way to explain it: “Mr. and Mrs. Homeowner, my listing fee is 3% (or 2%, 3%, etc.), which covers my services as your listing agent. Now, there's another part of the transaction — the selling side. If another agent represents the buyer, they'll get paid their share. Now, if I have to manage the buyer side as well as my own, then I am doing double duty and would be paid for both sides of the transaction.”

What do I do when my seller says, “I heard I do not have to pay the buyer agent’s fee. Is this correct?”

- Technically, the seller is not obligated to pay the buyer agent’s fee, but doing so can significantly enhance the attractiveness of their property. Here’s why:
 - **Increased Buyer Interest:** Covering the buyer agent’s fee makes your property more appealing, potentially leading to a higher selling price.
 - **Easier Financing:** When buyers don’t need to outlay additional funds for professional fees, they can allocate more money toward the down payment, improving their loan qualification.
 - **Competitive Advantage:** If other sellers choose not to pay the buyer agent’s fee, your property becomes more attractive by comparison.

Why is it important for a seller to have a buyer represented by an agent?

- It's crucial for a seller to have a buyer represented by an agent because, as you know, real estate contracts primarily bind the seller more than the buyer. Buyers typically have multiple “back door” strategies to get out of a contract, such as inspection, appraisal, mortgage commitment, etc.
- Sellers, however, have no such outs once the contract is signed. Therefore, it's in the seller's best interest to have a buyer who is well-guided and informed to prevent delays and ensure a smoother transaction. An unrepresented buyer might miss critical steps, leading to complications that could lock the seller into a prolonged and uncertain process.
- By insisting on buyer representation, the seller ensures that the buyer has the necessary guidance to meet all contractual obligations, thereby reducing the risk of the sale falling through.

What should you do if a current seller's listing needs an addendum due to the new settlement requirements?

- If a current seller's listing needs an addendum due to the new settlement requirements, you should arrange a meeting with the seller to explain the situation and get the necessary documents signed.
- Use the opportunity to discuss any other potential changes to the listing agreement, such as extending the listing period if it's nearing its end. This conversation not only ensures compliance with the new requirements but also strengthens your relationship with the seller by showing your proactive and thorough approach to managing their listing.



If the seller does not offer compensation to the buyer broker, can that be negotiated in the sales contract?

- Yes, the buyer's broker compensation can be negotiated as part of the sales contract. If the seller does not initially offer compensation, you can include this as a term in the offer. This way, the seller agrees to pay the buyer's agent fee as part of the overall negotiation process, ensuring that the buyer's agent is compensated appropriately.

Can I use an addendum instead of signing a new agreement with the seller?

- Yes, you can use either an addendum or sign a new exclusive right to sell agreement. Both options are valid, and it depends on your preference and the specific circumstances of the listing.

Can the seller decide what compensation they will pay based on the offer?

- Yes, the seller has the flexibility to decide what compensation they will pay based on the offer they receive. This can be negotiated as part of the overall terms of the sale. For example, if a buyer's agent requests a certain professional fee, the seller can agree to pay that amount, which can be reflected in the final contract price. This flexibility allows for tailored negotiations that meet the needs of all parties involved.

What if the property doesn't appraise for the contract price?

- If the property does not appraise for the contract price, it can create challenges, but it's important not to worry prematurely. Stay positive and address appraisal concerns if and when they arise. Typically, if a property does not appraise, it can lead to renegotiations between the buyer and seller to reach an agreeable solution. Possible outcomes include lowering the sale price to the appraised value, the buyer bringing additional funds to cover the difference, or a combination of both. Prepare to handle these situations calmly and professionally to find a resolution that works for both parties.

When does the seller need to decide about paying the buyer agent?

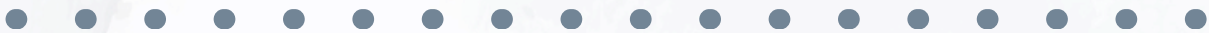
- When it comes to deciding whether to pay the buyer's agent, the seller typically makes this decision during the listing process, before the property goes on the market. It's important to have this discussion early with clients to determine the commission structure and the percentage, if any, that they are willing to offer to the buyer's agent.
- According to a Fannie Mae study, appraisers often focus on finding comparable properties (comps) to justify the contract price rather than determining the property's standalone market value. If a property doesn't appraise at the contract price—an occurrence in only about 8% of contracts—most of these cases are resolved successfully, ensuring the transaction proceeds to closing. By addressing the commission structure upfront, sellers can avoid last-minute surprises and ensure a smoother negotiation process should any appraisal issues arise.
- Ultimately, the decision of whether or not to offer compensation to a buyer's agent is sellers' to make, and it's important to weigh the potential benefits and drawbacks in the context of their overall selling strategy.



Is the listing agent required to disclose if the seller is willing to pay a buyer's agency compensation?

- No, the listing agent is not required to disclose what the seller is willing to pay for the buyer's agency compensation. The listing agent must follow the seller's instructions and ensure any negotiations regarding the professional fee are conducted transparently and ethically.
- The buyer's agent should include their professional fee requirements in the offer, and the seller can negotiate based on that.

Darryl Explains What the Lawsuit Was and What it WASN'T.



To help agents more accurately communicate the lawsuit to home buyers and sellers, Darryl recorded a special consumer video that can be shared with your clients. It's pure Darryl – speaking in layman's terms, breaking down all the complexities of this case and clearing up some of the biggest misconceptions that were being pushed out to consumers from the media.

You can watch it on YouTube here!

Questions About Our Professional Fees

What are your thoughts on presenting the buyer's agent compensation as a seller's concession on the sales contract?

- Incorporating the buyer's agent compensation as a seller's concession was initially considered a way to adapt to new regulations. However, it's essentially the same as including the professional fee in the contract price and paying it out as usual.
- If the seller is open to a seller's concession for the buyer's agent professional fee, it can be done that way, but it doesn't offer any additional benefit over the standard method of handling professional fee. It's more about how you phrase it to the seller, but the end result is the same.



**Australia Agents
2 - 3% Commission**

- **Agent Compensation:** The commission structure and sharing practices are quite different in Australia.
- **Market Ideology:** Agents in Australia are less cooperative with each other. Also, over 40% of houses are sold as an auction on the front stoop of the house.
- **Marketing Expenses:** The seller pays for that in advance, typically thousands.

**Great Britain Agents
1 - 3.6% Commission**

- **MLS System:** There is none.
- **Agent Compensation:** Great Britain agents (negotiators) are salaried with small bonuses.
- **Licensing Requirements:** There is none.
- **Agent Cooperation:** Unlike the U.S., there is none.
- **Marketing Expenses:** The seller pays for that in advance, typically thousands.



Aren't professional fees in the U.S. higher than anywhere else in the world?

- This question often references Australia's model, where the fee is 2-3%. However, the structure and practices differ significantly. In the U.S., our MLS system fosters cooperation between listing and selling offices, which is unique and highly effective.
- Over 40% of homes in Australia are sold at auction, a method not commonly used here.
- In Australia, sellers pay marketing expenses upfront, a practice that doesn't apply in the U.S. Here, agents often invest their own money into marketing a property, taking on significant risk.

POWER AGENTS® - Find these visuals and more in the Consumer's Guide to the NAR Antitrust Lawsuit and Settlement in the Classroom.

What if a client says “I heard that the National Association of REALTORS® (NAR) agreed to cut their standard 6% commission. Is this true?”

- There is no "standard" industry fee. Professional fees are negotiable and vary from office to office. The idea of a nationally set fee is a misconception. In fact, professional fee rates have been declining since 1991, contrary to some sensational headlines.
- NAR has never charged professional fees directly; they are an association that supports their members, not a regulatory body that sets professional fee rates.
- Think of NAR like other associations, such as the Automobile Club of America or the National Automobile Dealers Association. These organizations don't make money from transactions like towing services or car sales; instead, they support their members through various services funded by membership dues. Similarly, the NAR helps REALTORS® perform better through education and advocacy, not by taking a cut of professional fees.

What do I say when my client says, “You must admit that you folks are paid a lot?”

- This common sentiment is often influenced by reality TV shows that misrepresent our profession. Shows like "Million Dollar Listing" give consumers the false impression that real estate agents live lavish lifestyles filled with caviar and limousines. In reality, the majority of agents work hard every day, facing significant financial risks and uncertainties.
- Real estate agents are not salaried employees; they earn their income based on performance.
- Agents invest their own money into marketing, pay for their own health insurance, and often work months without a paycheck.



- Unlike employees who receive regular paychecks regardless of performance, agents must continuously hustle to earn their professional fees. This distinction is crucial for consumers to understand.
- When explaining professional fees to clients, use clear examples. For instance, a \$500,000 home sale with a 6% professional fee results in a \$30,000 professional fee. This fee is split between the listing and selling offices. From there, each agent receives a portion, and after expenses and taxes, the actual take-home pay is much less after paying expenses.
- According to U.S. News, the average real estate agent makes \$48,340 annually. This figure, corroborated by the U.S. Labor Statistics, highlights that most agents earn modest incomes, far from the extravagant portrayals on TV.

How do we ask the listing agent what they're paying my as the buyer's agent?

- When you write and present your offer (and not before), you will learn what the seller is willing to pay during negotiations. Calling to find out before presenting an offer can lead to legal issues.

Does MyStateMLS allow the buyer agent fee to be listed on their website?

- Yes, MyStateMLS does allow the buyer agent fee to be listed on their website. However, it's STRONGLY advisable not to list the buyer agent fee on these third party sites. They will tell you that you can because they were not part of the settlement, which is true, but as a REALTOR®, YOU are part of the settlement, and by advertising your fees on your website, you're violating the settlement agreement.

Can you have fees listed on your website if it has an IDX feed?

- This is a complex question that requires further investigation. The initial reaction is that listing fees on your website with an IDX feed might not be allowed, but this needs to be confirmed.
- It's best to send this question to an expert or legal advisor to get a definitive answer.

Can you set the fee range as 1 to 3%?

- No, you cannot set your fee as a range. Your fee needs to be a specific number or percentage. For instance, you can offer various service levels to buyers with corresponding fees, but each level should have a fixed fee. For example, 1% for showing houses once a week, 2% for showing houses three times a week, and 3% for unlimited showings.

Do we have to update and remove the compensation on MLS for currently under contracts as well?

- No, you generally do not have to update and remove the compensation for listings that are already under contract. However, it won't hurt to update everything to cover all bases. It's better to overprepare and ensure compliance with any new regulations or practices, even for existing contracts. This approach can help avoid any potential issues that might arise later.

Can the professional fee be negotiated in the sales contract if the seller does not offer compensation to the buyer broker?

- Yes, if the seller does not offer compensation to the buyer broker, you can negotiate the professional fee as part of the sales contract.
- Include the buyer agent's fee in the offer, specifying that the seller will cover this cost as part of the overall transaction. This ensures that the buyer agent is compensated appropriately.



What happens with the excess professional fee if not received by the buyer agent?

- If your buyer agency agreement specifies a 2% fee and the seller is offering 3%, the additional 1% remains with the seller. It's similar to if someone offers you \$100 but you only ask for and take \$50; the remaining \$50 stays with the person who offered it. In this case, the seller keeps the extra 1%.



Can the professional fee be split between the buyer and the seller, like 2% from the buyer and 1% from the seller?

- Yes, it is possible to split the professional fee between the buyer and the seller. However, it's important to ensure that the Buyer's agreement clearly specifies how the professional fee is divided and that both parties understand and agree to the terms. Proper documentation is key to avoiding any misunderstandings.

How can we use a seller's concession to cover our professional fee?

- The seller's concession can be used to cover various closing costs, including the buyer's agent professional fee. The government regulates the amount of seller concessions based on the loan product and down payment, ranging from 2% to 9%.
- The definition of a seller's concession includes any expense a buyer needs to pay to close on a real estate transaction, which covers your professional fee. However, using the seller's concession to cover your fee might not be the most efficient use of those funds.
- Instead, you can increase the contract price to include your professional fee, allowing the full seller's concession to be used for other closing costs, ultimately benefiting both the buyer and the seller.

Can I still charge an additional processing fee on top of my professional fee as a buyer's agent?

- Yes, you can charge an additional processing fee on top of your professional fee. For example, you can specify that your fee is 3% plus a \$500 administrative fee. When you present your offer to the seller, include this information clearly.
- However, since this is a new approach, it might be better to keep your fee structure simple initially, especially if you're feeling uncertain about the conversation. Once you're more comfortable with the process, you can introduce the additional fee more confidently.

Can the listing agent require the selling agent to submit the buyer representation agreement with their offer?

Whether a listing agent can require a buyer's agent to submit a buyer representation agreement with an offer can vary by state, but several general principles apply across the United States. The simple answer is no, the listing agent cannot make that demand for the following reasons:

- **Fair Housing Laws and Ethical Standards:**
 - Requiring the buyer representation agreement could be seen as a potential violation of fair housing laws and ethical standards, particularly if it creates an unnecessary barrier to the submission of offers or could be perceived as discriminatory.
- **Fiduciary Duty to the Seller:**
 - The listing agent has a fiduciary duty to act in the best interests of the seller. This includes presenting all offers unless there is a lawful reason not to. Imposing additional requirements, such as demanding a buyer representation agreement, could be seen as an unnecessary barrier that might prevent the seller from considering all potential offers, which may not align with the seller's best interests.

- **NAR Code of Ethics:**

- According to the NAR Code of Ethics, listing agents must present ALL offers to the seller as soon as possible. This requirement generally applies regardless of whether the buyer's agent submits a buyer representation agreement. Refusing to submit an offer without this agreement could be considered a violation of these ethical obligations.

- **License Law:**

- Each state has specific laws that govern agents' licenses, so call your Department of Licensing to find out what they say on this topic. In general, license law does require agents to act in the best interests of their clients. Imposing additional requirements that are not necessary for evaluating the offer could be seen as a breach of the agent's fiduciary duty to the seller, as it may prevent the seller from considering all potential offers.



- **Seller's Instruction:**

- **Seller's Direction:** If the listing agent claims they are acting on the seller's instructions to request a buyer representation agreement, the situation becomes more complex. While the seller has the right to dictate certain terms, the listing agent must ensure that these instructions do not violate fair housing laws, state real estate laws, or ethical standards. The agent must still act within the bounds of legality and ethics, even when following the seller's directives.

- **State-Specific Regulations:**

- **State Laws Vary:** Different states have varying regulations and interpretations of what is permissible in real estate transactions. For instance, some states may have stricter interpretations of what constitutes discrimination or an unfair practice in real estate. It's important to consult local real estate laws or a legal professional in your state to understand the specific rules.

The listing agent's demand to see the buyer representation agreement before submitting the buyer's offer, or insisting that it be included in the offer, is likely unlawful and unethical. You can challenge this requirement by reminding the listing agent of their duty to present all offers to the seller and by citing relevant ethical guidelines from the NAR Code of Ethics. If necessary, you may also consider filing a complaint with the local real estate board or seeking legal advice.

Next Steps:

- **Contact the Listing Agent:** Politely but firmly remind the listing agent of their obligation to present all offers to the seller promptly, regardless of whether a buyer representation agreement is included.
- **File a Complaint:** If the listing agent continues to refuse to submit your offer, you may want to file a complaint with the local real estate board or the Department of State's Division of Licensing Services, which oversees real estate licensing and compliance.

This approach ensures that your rights and the interests of your client (the buyer) are protected, and it encourages compliance with the laws and ethical standards governing real estate transactions.



Doing the Professional Fee Math: How to Add The Buyer Agent Professional Fee Into The Contract Price

One thing that agents are getting hung up on is doing the math when it comes to calculating the correct contract price when factoring in the professional fee to ensure that the seller nets their desired amount. Here's a scenario to show how to properly do the math:

Scenario:

- **Seller's Desired Net:** \$515,000
- **Buyer's Agent Professional Fee Rate:** 3%

Problem:

Bob attempted to calculate the professional fee by taking 3% of \$515,000, which results in \$15,450. However, this method doesn't account for the fact that the professional fee should be calculated on the total contract amount, not the seller's net amount.

The Math:

- **Goal:** The seller wants to net \$515,000 after paying a 3% professional fee.
- **Incorrect Approach:**
 - Bob's method: 3% of \$515,000 = \$15,450
 - Total Contract Amount using Bob's method:
 - $\$515,000 + \$15,450 = \$530,450$
 - Now, calculating 3% of \$530,450:
 - $0.03 \times 530,450 = \$15,913.50$
 - New net to seller:
 - $\$530,450 - \$15,913.50 = \$514,536.50$
 - The seller nets less than \$515,000, which is why this method is incorrect.
- **Correct Approach:**
 - To find the correct contract amount, you need to account for the professional fee by dividing the desired net amount by 1-0.031, or 97%.
 - Calculation:
 - $\text{Contract Price} = \$515,000 / 97 = \$530,927$
 - Now, calculating 3% of \$530,927:
 - $0.03 \times 530,927 = 15,927.03$
 - New net to seller:
 - $\$530,927 - \$15,927 = \$515,000$

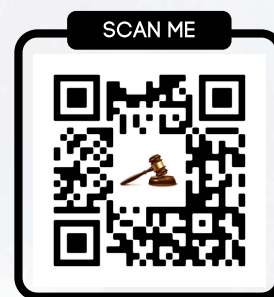
To ensure the seller nets \$515,000, the correct contract price should be around \$530,927, not simply adding 3% of the net amount. This way, after deducting the 3% professional fee, the seller will indeed net their desired \$515,000.

THE REALTOR'S® COMPLETE POST-NAR LAWSUIT HANDBOOK:

EVERYTHING YOU NEED TO GUARANTEE YOUR COMMISSION

FREE Online Training
with Darryl Davis, CSP





**Watch this full webinar on demand
today and change your perspective
and your business!**

Conclusion

When faced with challenges — be it a disruptive competitor like Zillow or the uncertainties brought on by legal battles — it's easy to feel overwhelmed. But remember, these obstacles are what make us stronger. We seasoned professionals have seen the industry go through many trials. Every so often, a metaphorical grenade explodes, shaking up the business. But these challenges only serve to sharpen our skills and fortify our resolve.

One of the most important things I implore you to understand in moving forward post settlement is that you need to have absolute **CONFIDENCE** so that you can have absolute **CONFIDENT CONVERSATIONS** with home buyers and sellers.

You can't waffle. You can't appear to be insecure or fearful of presenting this information. If you do, you'll create a space for them not to trust you or that you know what you are doing.

We get why you might feel that way, it's a common denominator for agents that have been through what you all have been through since this whole thing started. Take a deep breath now and let it go. It's time to dig in and wrap your head around all the new skills you need to **MASTER** to move forward with confidence.



These skills in particular:

- Communication
- Negotiation
- Sales
- Service
- Mindset (Know Your Value)
- Time Management
- Client Management

I've given you a lot to think about, I know. I've also given you every resource you need to bounce back from this and truly come back to a place where you can LOVE what you do again. Where you can feel FIRED UP when your feet hit the ground in the morning and PREPARED to handle and navigate every conversation, every situation that comes your way with more ease and less stress.

I can also tell you that my team and I will 1000% be in your corner through this and every other twist or turn our industry goes through. We will continue to fight for you all. We will continue to research and develop new tools and training that will help you grow your business and flourish. We will continue to create a viable, incredible support system and network that will be a foundation for every POWER AGENT® in the world.

Let me leave you with this analogy: when you buy a new pencil, it's flat and unusable until you sharpen it. It's the friction of the sharpener that transforms the pencil into a tool that can fulfill its purpose. Similarly, the friction our industry is currently experiencing will not weaken us; it will make us stronger, more effective agents.

So, embrace these challenges. They are opportunities for growth. The friction you've been through will help you become a better agent.

Let's keep moving forward, embracing the challenges, and turning adversity into strength.



Resources

FACT SHEET FROM NAR (4-24-2024)

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NAR and plaintiffs have reached a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions. 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 brokerages with a NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.

The settlement is subject to court approval. Ultimately, we believe this was the best outcome we could achieve in the circumstances. The large settlements that other corporate defendants have already reached were important factors going into what NAR could achieve in this settlement.

Coverage of NAR's Release

Implications for Members

- Over one million NAR members are released from liability nationwide.
- NAR's release covers all members other than agents affiliated with HomeServices of America and its related companies (the last corporate defendant still litigating the Sitzler-Burnett case), and employees of the remaining corporate defendants named in the cases covered by this settlement.

Implications for Brokerages Owned by Members

- Brokerage entities owned by members that had a residential transaction volume of \$2 billion or below are released from liability nationwide.
- While we would have preferred to protect all industry players, ultimately NAR could not persuade the plaintiffs to include the largest brokerages.

- 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 choose to use it.

Implications for NAR and other REALTOR® Associations

- NAR is released from liability nationwide.
- Any officers, directors, or other participants in NAR activities are released from liability nationwide for their role or participation in NAR.
- All state/territorial and local associations of REALTORS® are released from liability nationwide.

Implications for Association-Owned MLSs

- The release includes all MLSs that are wholly owned by one or more REALTOR® associations.

Implications for Other MLSs

- The agreement provides a mechanism for other MLSs to be covered by it 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.
- While we would have preferred to protect all industry players, the MLSs not wholly owned by a REALTOR® association were excluded by plaintiffs.



Practice Changes

- We were able to retain the right of consumers to continue to have cooperative compensation as an option so long as they pursue it off-MLS through negotiation and consultation with real estate professionals.
- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. The change will go into effect on August 17th, 2024.

Implications for members

- There will continue to be many ways in which buyer brokers could be compensated, including through offers of compensation communicated off MLS – as 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.
- 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.

Implications for home buyers and 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.



New rule about written agreements

- 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.
- The settlement provides that MLS participants working with buyers must enter into written representation agreements with those buyers.

Implications for members and home buyers and sellers

- After the new rule goes into effect:
 - 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.

Other cases concerning the MLS cooperative compensation Model Rule

- Because the agreement would not end litigation as to all defendants, litigation concerning cooperative compensation may continue.
- In *Batton I* (N.D. Ill.), NAR's answer to plaintiffs' amended complaint is due on April 14, 2024. There is a status hearing on May 7, 2024.



Next steps in settlement process

Court approval and opt outs

- There are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.
- We can expect the process of court review to take several months or more.
- In large class action settlements like this one, objections and opt outs are common, and the plaintiffs and NAR will handle them as they come.

NAR operations

- Nothing about this settlement changes NAR's commitment to lead our industry forward and support our members.
- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
 - 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.
- 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.

- NAR has evolved multiple times in its history, including by introducing the MLS Model Rule in 1990s in response to calls from consumer protection advocates for buyer representation, and is doing so again now.
- Our leadership and staff remain focused on their work to deliver the value that has set this association apart for so many years.

Why settling made sense

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 Sitzler-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 Sitzler-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 Sitzler-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.



What's next?

The practice changes went into effect in mid-August 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.
- We will move to have litigation about the MLS cooperative compensation Model Rule stayed, or paused, as to NAR pending the settlement approval process.
- NAR will also continue to provide updates about the settlement process as it unfolds.



OVERVIEW FROM NAR

NAR Settlement Overview March 2024

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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 court approval.



Key settlement terms

- 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 choose to use it.
 - **Release of liability**
 - NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
 - **Offers of compensation prohibited from the MLS**
 - NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
 - **Written agreements for MLS participants acting for buyers**
 - The settlement provides that MLS participants working with buyers must enter into written agreements with those buyers.
 - **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.
 - **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.

Release of liability

Who is covered?

To be clear, if you are a REALTOR® and:

- Affiliated with a brokerage group that is not discussed below, you are covered (even if your brokerage may not be covered).
- Affiliated with any of these brokerage groups, and are an independent contractor, you are covered (even if your brokerage may not be covered).
 - At World Properties, LLC; Compass, Inc.; 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; Real Broker, LLC; The Real Brokerage, Inc.; Realty ONE Group, Inc.; Redfin Corporation; United Real Estate; and Weichert, Realtors®.

Opt-in mechanism for brokerages with residential transaction volume in 2022 that exceeded \$2 billion 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 that calculates 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.
- All agreements reached through this mechanism would be subject to court approval.



Offers of compensation prohibited from the MLS

NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.

- There will continue to be many ways in which buyer brokers could be compensated, including through offers of compensation communicated off MLS – as 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.
- 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.
 - Portion of the listing broker's compensation.

Written agreements for MLS participants acting for buyers

The settlement provides that MLS participants working with buyers must enter into written agreements with those buyers before touring a home.

- 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. This change will go into effect in mid-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's membership dues for 2024 and 2025 will not change because of this payment.

NAR continues to deny any wrongdoing

The settlement makes clear that NAR continues to deny any wrongdoing in connection with the 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 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.

Next steps in the settlement process

- 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.
- To opt into the settlement, REALTOR®-owned MLSs, brokerages above the \$2bn threshold who are opting-in, and non-REALTOR MLSs need to execute an appendix.
- The practice changes will go into effect in mid-August 2024.
- We will move to have litigation about the MLS cooperative compensation Model Rule stayed, or paused, as to NAR pending the settlement approval process. Nothing about this settlement changes NAR's commitment to lead our industry forward and support our members.



SUMMARY OF LAWSUIT

NAR Settlement Agreement

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The Mandatory Changes Based on The Settlement Agreement

1. Eliminating Mandatory Compensation Offers:

- MLSs (Multiple Listing Services) can no longer require listing brokers or sellers to make offers of compensation to buyer brokers.

- Offers of compensation to the selling agent, if made, should not be blanketed in the same amount (universal) or unilateral. For example, offering a 3% selling agent fee like we used to is ok.

2. Prohibiting Disclosure of Broker Compensation:

- MLSs are prohibited from making or displaying offers of compensation to buyer brokers on MLS platforms.
- Any compensation offered to buyer brokers should not be listed or shared on MLS, but can be offered on other platforms, such as the broker's website.

3. Requirement for Written Agreements:

- All REALTORS® working with buyers must have a written agreement with their buyers before showing them any properties.
- This agreement must disclose the amount or rate of compensation the REALTOR® will receive or how it will be determined.
- The disclosed amount must be specific and not open-ended (e.g., cannot be "whatever the seller offers").

4. Transparency and Disclosure:

- REALTORS® must clearly disclose and obtain seller approval for any payments made to other brokers or agents representing buyers.
- These disclosures must be in writing and provided before any payment is agreed upon.
- REALTORS® must inform buyers and sellers that broker commissions are negotiable and not set by law. This information must be included in listing agreements, buyer representation agreements, and pre-closing disclosure documents.

5. No Misleading Claims:

- REALTORS® cannot claim their services are free unless they truly receive no compensation from any source for their services.

6. Prohibiting Listing Filtering Based on Compensation:

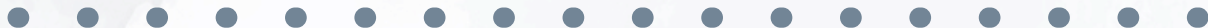
- REALTORS® and MLSs cannot filter or restrict MLS listings shown to clients based on the level of compensation offered to buyer brokers.

7. Educational Changes:

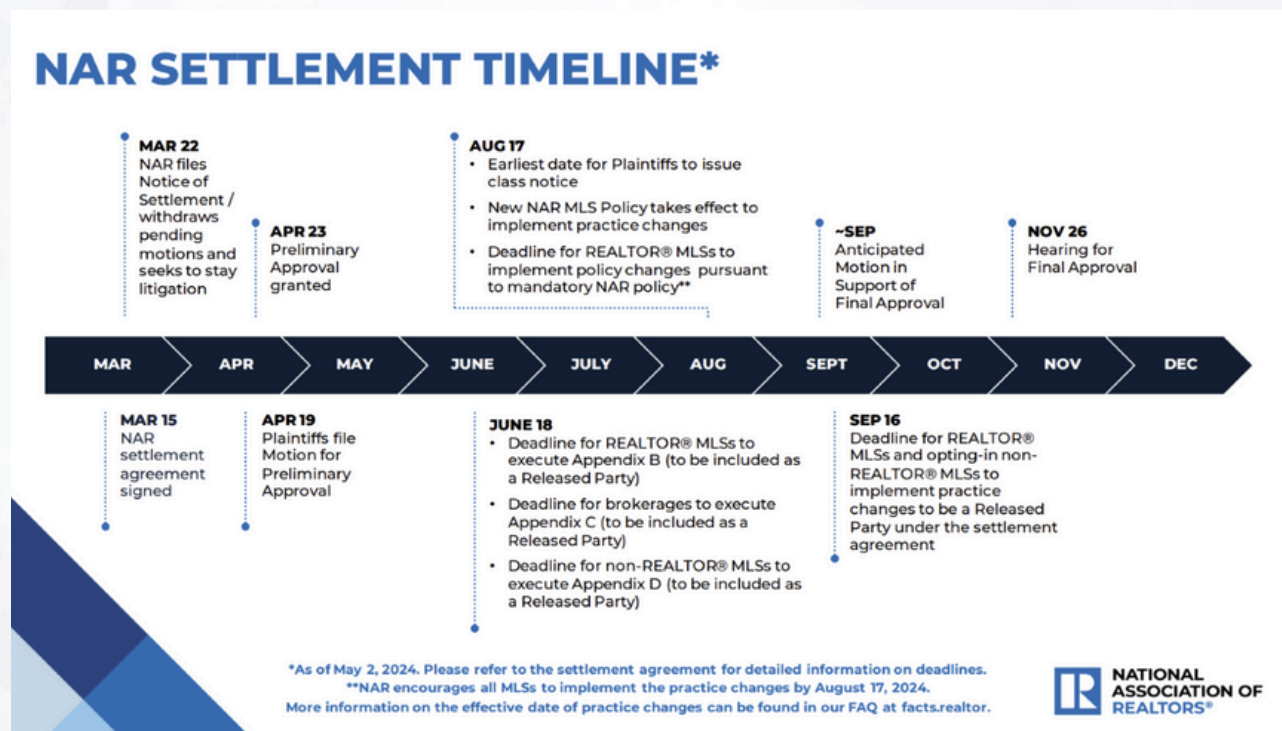
- The National Association of REALTORS® (NAR) must develop educational materials consistent with these practice changes and eliminate any conflicting materials.

8. Cooperation with Plaintiffs:

- The NAR agrees to provide cooperation to plaintiffs in the form of authenticating documents, making employees available for depositions, and other necessary support during the legal proceedings.



NAR Lawsuit Timeline





READY TO KEEP LEARNING?

Join us for Weekly Webinars!

In today's market, there is a LOT to keep up with. Changes and challenges abound – and that often means steep learning curves for agents on the topics that matter most for building your business.

Like...

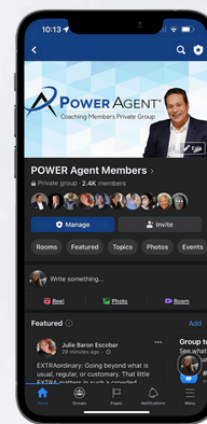
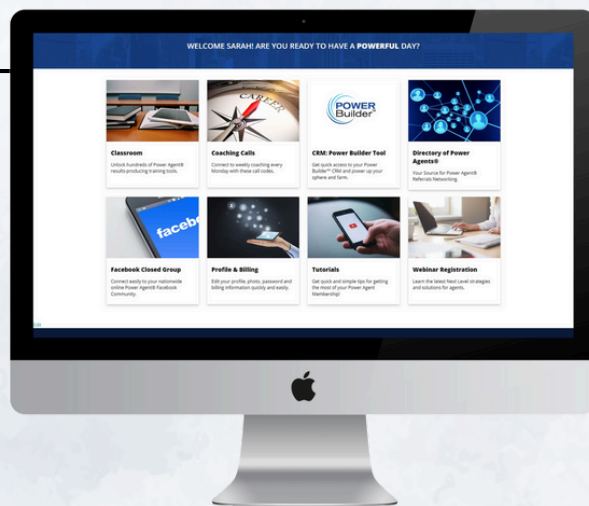
- How to **get listings and build inventory**, even in challenging markets
- How to *stay ahead of **industry change including lawsuit updates***
- How to **keep distractions at bay** and **productivity high**
- How to *tap into the top technology tools* without needing an engineering degree
- How to **master time management** so you can have a career and a life
- How to build a referral base and *create customers for life*

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How to stay top of mind consistently to create a flowing pipeline of listing and buyer leads and how to have CONFIDENT CONVERSATIONS about your professional fees.

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Consistent marketing and self-promotion are integral parts of a successful, long-term real estate business. They are what will allow you to stay top of mind with your sphere and farm.

The problem most agents have is that they get stuck in the “**what to do and when to do it**” dilemma, and indecision leads to inaction, especially now when **distraction is at an all-time high post-settlement.**

In our **POWER AGENT® Program**, we deliver the marketing resources, tools, coaching, and training agents need to master the art of prospecting and farming – without trying to reinvent the wheel. We’re also delivering the tools that help you communicate what this lawsuit is - and what it ISN’T to your clients.

Each week, we host a coaching call where agents can get their questions answered, solve a problem, and learn new ideas and strategies in a fun, engaging, and informative session.

Each week we host an hour-long, action-packed training webinar on the topics that most impact agents in the market, followed by a Q & A session.

We offer a robust classroom filled to the brim with everything agents need to succeed with more ease. Prospecting, farming, coaching, listing appointments, webinars-on-demand, objection handling, negotiating, tech tools and training, social media tools, technology, recommended vendors – and more.

What do YOU want to learn first? We’ve got you covered.

**Try Our 30-Day All-Access Trial
and Become a Power Agent® Now!**

Learn more at www.TryThePowerProgram.com

About Darryl Davis, CSP

Darryl Davis is an award-winning international speaker, real estate and business coach, and best-selling author of three books all published by McGraw Hill Publishers. For more than 35 years, Darryl has spoken to and trained more than 100,000 sales professionals around the globe to more than double their production year after year. His book, ***How to Become a Power Agent in Real Estate***, tops Amazon's charts as one of the most sold books to real estate agents.

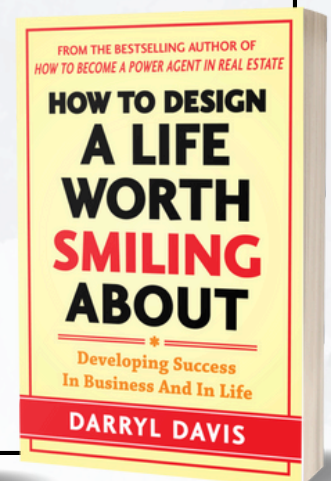
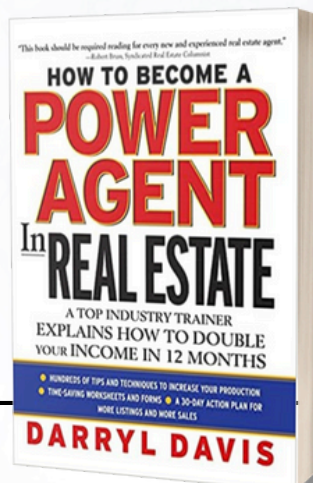
With the most time and research invested in the NAR Lawsuit surrounding commissions, Darryl has stood out as a frontrunner resource and has developed a comprehensive NAR lawsuit resource and training hub to help agents navigate the changes.

He was awarded the CSP designation by the National Speaker's Association which is given to less than 2% of all speakers worldwide. Whether from a stage or Zooming into a virtual room, Darryl's extraordinary humor, relatability, and natural gift for teaching real-world, results-producing skills and mindsets to audiences have made him a client favorite throughout his career.

Audiences will laugh, learn, and ultimately walk away better prepared for a changing world, with the tools, skills, and training they need to build their businesses with more ease and less stress and to design lives and careers worth smiling about.

Other Books by Darryl Davis, CSP

- *How to Become a Power Agent in Real Estate*
- *How to Make \$100,000 Your First Year in Real Estate*
- *How to Design a Life Worth Smiling About*
- *How to Design a Live Worth Smiling About Second Edition*



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"Success in real estate isn't about avoiding challenges—it's about rising above them. The recent NAR lawsuit and settlement are just reminders that change is constant, but those who are prepared, who continue to learn and adapt, will not only survive but thrive. When you're equipped with the right mindset and tools, every obstacle becomes an opportunity to elevate your business and serve your clients better. Remember, the true power lies within you—stay focused, stay driven, and success will follow."

