

NAR Settlement FAQs: General

1. Is the buyer agent going away?

No. NAR's settlement absolutely assumes that there will still be buyer agents.

2. Is Canada, or any other worldwide markets, involved in the NAR Settlement?

NAR is an American association. NAR's settlement does not currently address any MLS rules in Canada or any other worldwide market.

3. Do the same rules apply for commercial real estate?

If you are using a NAR REALTOR MLS or are a member of NAR or non-REALTOR MLS that opts into the settlement, then yes.

4. If we aren't NAR members, can we join a non-REALTOR MLS and not have to follow these rules?

Non-REALTOR owned independent MLSs are not automatically released from liability under the settlement, but they do have a mechanism to opt into the settlement protections. The non-REALTOR owned MLSs that opt in would be required to adopt the same rules. The deadline for non-REALTOR MLSs to opt in is June 18, 2024.

5. Why be a member of NAR?

Let's be clear, Keller Williams does not require you to be a NAR member. In some form or fashion NAR has been in existence since 1913. There have been times when they have been an incredible association to the benefit of their members. We believe that NAR is going to have to present its case to each and every agent and every agent will need to decide.

6. If NAR just shot its primary value of the MLS in the foot, is it time to revisit the possibility of a National MLS?

It's way too soon to start asking this question. Going forward, NAR will certainly need to clearly articulate its value to agents and the industry.

7. Will KWRI be providing appropriate buyer representation agreements?

Buyer representation agreements are created at a state and/or local level or approved by your broker of record. We will be providing guidance as to what should be addressed in these agreements to help you make sure they are complete.

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8. Will there be a uniform/official buyer representation agreement to be used for all buyers agents going forward?

As of right now, buyer representation agreements will still be created at the state and/or local level. NAR's MLS rule changes address the minimum requirements of a buyer representation agreement. Those requirements are:

- a. A specific and conspicuous disclosure of the amount or rate of compensation the agent will receive or how this amount will be determined, to the extent that the agent will receive compensation from any source.
- b. The amount of compensation in a manner that is objectively ascertainable (clear and specific) and not open-ended.
- c. A term that prohibits the agent from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the buyer representation agreement.
- d. A conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

9. How will this affect our ability to double-side a deal?

No matter the circumstances, if you are working with a buyer and intend to represent and get paid by the buyer, you need to have a signed buyer representation agreement and if you're working with a seller and intend to represent and be paid by the seller, you need a signed listing agreement. These agreements can not be the same.

However, if you're working with a seller and you intend to be paid only by the seller, and the buyer of the home is unrepresented, then you only need a signed listing agreement that outlines this scenario. The mechanics of if and how this would work will be determined by your state, your local board, and/or by your broker.

10. Can we disclose on the MLS in Remarks that there is no buyer agent commission being offered by the seller?

Different MLSs may have different views on whether this is permissible, but it appears that listings cannot have any information about whether buyer agent commissions are being offered. For example, according to NAR, MLSs cannot have a "Yes/No" compensation field because the new MLS policies prohibit any information about compensation in the MLS.

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11. Can we upload all of our listings onto KW.com and offer co-broker compensation on that site?

No. NAR's MLS rule changes make clear that listings displayed on kw.com cannot include offers of cooperative compensation.

12. Who is going to enforce this locally?

According to NAR, local MLSs will be responsible for enforcing the rule regarding written agreements, like local MLSs enforce other existing rules. Local MLSs are not required to obtain a copy of your buyer representation agreement, but they can request it as a matter of their local enforcement.

13. Do you think the changes to the buyer representation agreement is going to impact our teams' structures?

Team structures, like any other business arrangement, are created around income for value provided and the cost to provide that value. Each team owner has to determine the profit that they seek and the profit margin they will accept. As in any business, if there is a change to income opportunities, there most likely will have to be a corresponding change in expenses.

14. Based on the changes of how buyer agents will be paid, would you advise us that as a precaution to ourselves to incorporate?

Consult your CPA or lawyer for what's best for your business, but we believe that every agent should incorporate as soon as they can.

15. Are there any concerns about VA and FHA loans?

Yes, but there have been positive developments regarding these loans. NAR reported that the Department of Veteran Affairs intends to lift its ban on home buyers paying for their agents directly. The ban is supposed to be lifted soon and could stay lifted for up to two years while the government works on a permanent solution. The FHA, Fannie Mae, and Freddie Mac have affirmed that seller payment of buyer agent commissions will continue to be excluded from limits on seller concessions.

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16. What skills can we be working on building to ensure we can make the most of these changes?

- *First*, know your value.
- *Second*, learn how to present your value.
- *Third*, lean into the new rules around buyer representation agreements as a way of having a successful conversation about your value.
- *Fourth*, go find sellers. The old adage “you list to last” has always been true and still is. Sellers are the inventory that creates the market.

17. Do you think the agents are more worried than they should be?

Yes. Those agents who understand and can convey their value should not be concerned. Know your value, present your value, and you will be just fine.

These changes are all about transparency. They are happening to make sure buyers are in full control of what buyer agents are being paid and that sellers are in full control over what they're paying.

Worrying does not serve anyone. Agents have been protecting home buyers and sellers for more than 100 years and during that time many rules have changed. We will adapt, we will evolve, and we will THRIVE.

18. I saw on Good Morning America that agents are taking a pay cut?

The media has gotten this wrong. The settlement wasn't about what we charge, it was about transparency around the seller understanding that cooperative compensation is not required and that it is negotiable, and if offered, is coming from the seller, not the broker. And transparency for the buyer that buyer agent commissions are negotiable and the buyer is responsible for paying it.

19. Does NAR's settlement address the amount of compensation paid to listing agents?

No.

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20. Can I use a listing agreement entered before the new MLS rules take effect on August 17?

It depends. If the listing agreement specifies that offers of compensation be made “on the MLS,” then the listing agent should work with the seller to amend the listing agreement so that it’s clear that the listing agent will not make an offer of cooperative compensation on the MLS and will not be breaching the listing agreement by failing to make such an offer. If the listing agreement discusses offers of cooperative compensation without reference to the MLS, no change is necessary.

21. What triggers the requirement of entering a buyer representation agreement?

A buyer agent must enter a written agreement with a buyer before “touring a home” with the buyer if the agent is “working with” the buyer. Buyer representation agreements are not required if the agent is working only as an agent or subagent of the seller.

22. What does “touring a home” with the buyer mean?

It means showing the home to a buyer. This includes working with the buyer to provide a live, virtual tour to a buyer who is not physically present. Written buyer agreements are required before a buyer agent shows a home to a buyer if the agent is “working with” the buyer.

23. What does it mean to be “working with” a buyer?

According to NAR, its settlement distinguishes between agents who provide brokerage services to a buyer from agents who simply market their services or talk to a buyer, like at an open house or while providing an unrepresented buyer access to a house the agent has listed. If you are providing brokerage services to a buyer, you are working with a buyer.

24. Can I use a buyer representation agreement entered before the new MLS rules take effect on August 17?

Only if that agreement complies with the new MLS rules when they take effect on August 17, including the minimum requirements of written agreements under the new rules. For example, if an existing agreement does not state the amount or rate of compensation the buyer agent will receive, or permits the buyer agent to keep any offers of cooperative compensation exceeding the agreed-to compensation amount, the agreement needs to be amended or a new agreement must be entered.

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NAR Settlement FAQs: Cooperative Compensation/Getting Paid

1. Is cooperative compensation now illegal?

No. Cooperative compensation is still legal. There is simply a new NAR rule that does not allow cooperative compensation to be offered on the MLS.

2. Can I still be paid by the seller?

The seller can still offer cooperative compensation to the buyer agent as long as the cooperative compensation is not listed on the MLS.

3. Can we still say “commissions”?

Yes! You simply cannot market or offer them on the MLS.

4. Is “commission” now referred to as “seller concessions”?

No, seller concessions is money that is being given by the seller directly to the buyer. The buyer can use those funds for anything that they would like, including paying their agent if they choose. Commission is money paid directly from the seller or listing broker to a buyer agent’s broker upon a completed closing.

5. Will buyer agents be forced to work for free?

No. No one can force you to work for free.

6. What’s going to happen to agent bonuses?

An agent will be able to be paid only what is agreed to in their buyer representation agreement for their brokerage services. That amount or percentage must be mutually agreed upon before signing.

7. Will there be no standard for buyer agent commission at all?

There never was. Commissions have always been completely negotiable.

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NAR Settlement FAQs: Cooperative Compensation/Getting Paid

8. If we will only be allowed to receive the commission amount set forth in our buyer representation agreement and we learn that the commission amount for a house the buyer wants to see is higher, can we amend our buyer representation agreement to that higher amount?

We are not sure how this will work out in practice, or how local MLSs or plaintiffs' attorneys may view such an amendment, but the NAR settlement does not prohibit buyer agents from entering a new or amended buyer representation agreement that either decreases or increases the amount of compensation.

According to NAR, its new MLS rules do not dictate:

- a. What type of relationship an agent has with the buyer (e.g., agency, non-agency, subagency, transactional, customer).
- b. The term of the agreement (e.g., one day, one month, one house, one zip code).
- c. The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- d. The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate)

9. If a buyer says they can't afford to pay me, what do I do?

You would include your compensation as agreed upon in your buyer representation agreement in the offer and negotiate it with the seller.

10. Can I still include cooperative compensation terms on a purchase agreement contract?

Yes.

11. If proposed settlements are accepted and MLS fields for cooperative compensation are removed, what's the point of MLS?

Please be careful with this sort of thinking. The MLS is one of the most effective market places ever created. It provides unmatched visibility for home buyers, unmatched exposure for home sellers, unmatched data (sold, property, and statistics) and communication ability for agents.

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NAR Settlement FAQs: Cooperative Compensation/Getting Paid

- 12. If the seller does not offer cooperative compensation, can the buyer offer 2% MORE on the agreed upon price and have the seller credit the buyer said overage in order to pay the buyer agent's commission?**

Yes.

- 13. If the seller offers a concession on the MLS and cooperative compensation off the MLS, how can I be sure my seller isn't at risk of paying both?**

The seller can always reject any offer. The wording of the off-MLS offer of compensation can also be worded to avoid this possibility.

- 14. My seller wants to offer cooperative compensation. Can I still market it?**

Yes. You can use any marketing channel that you want other than the MLS. This includes emails, newsletters, postcards, radio, tv, billboards, the phone, calls and texts that are TCPA-compliant, carrier pigeon, a raven, tin cans with a string, and of course, social media. Please be aware that Zillow owns ShowingTime and could decide not to let agents post offers of cooperative compensation on that platform, whether for liability concerns or other business reasons. Moreover, MLSs could interpret the settlement to prohibit Zillow from posting offers from multiple brokerages on ShowingTime because it is using MLS data directly or indirectly and therefore terminate its data feeds.

- 15. Can we receive a commission paid from both a buyer and a seller for the same transaction? Ex: 1.5% from a seller and 1% from a buyer? If so—how does this get accounted for? One commission statement or two separate, one for each party?**

Whether it's the seller's or the buyer's agent, their compensation will be determined by their respective agreements. Everything else will be determined by state and/or local laws and your local broker's policies regarding how commissions are paid.

- 16. If an agent can only accept compensation stated in the buyer representation agreement and a seller is offering more than what is in the agreement, what wording or stipulations can be added to the agreement to allow the buyer's agent to receive the higher amount of commission being offered by the seller?**

None that we know of. An agent will be able to be paid only what is agreed to in their buyer representation agreement for their brokerage services. That amount or percentage must be mutually agreed upon before signing. The agreement cannot say that the amount will be whatever amount the seller is offering to the buyer and leave it open-ended.

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NAR Settlement FAQs: Cooperative Compensation/Getting Paid

17. Can we, as agents, now accept flat fees or retainer fees, as well as commissions?

You always could. These are Market Center and individual agent decisions based on what you and your customer believe your value is.

18. What disclosures do I need to make to sellers about cooperative compensation?

Listing agents must conspicuously disclose in writing to sellers, and obtain the seller's authority, for any payments or offer of payment that the listing agent or seller will make to a buyer agent. This disclosure must include the amount or rate of any such payment and be made in writing in advance of any payment or agreement to pay.

19. Can buyers and buyer agents rely on an offer of cooperative compensation that was on the MLS before the new MLS rules take effect on August 17?

According to NAR, if the sales contract is executed before the MLS rules take effect, the buyer and buyer agents should be able to rely on the offer even if the closing happens after the effective date. However, if the sales contract is not executed before the MLS rules take effect, the offer on the MLS will not be valid and the offer should be written into the sales contract.

20. Are buyer agents prohibited from negotiating their compensation in a buyer's purchase offers?

No. According to NAR, Standard of Practice 16-16 does not prohibit this. A buyer can always ask their agent to make it a term of an offer to purchase that the seller pay certain compensation to the buyer agent.

Let's be clear, since your buyer representation agreement states a specific amount of commission, you cannot ask for more in the purchase offer.

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NAR Settlement FAQs: Showing Properties

1. How do open houses work as a listing agent holding it open?

Not much changes here. Listing agents will continue to hold open houses on their listings and upon greeting/showing the property will do so as a seller's agent. If one of the people they showed the home wishes to write an offer they may do so in accordance with state and local laws which may include as a seller's sub-agent or a dual agent. If the buyer wishes to see other homes then they will need to execute a buyer representation agreement.

2. How do open houses work if it's not my listing?

The intent of the settlement is if you want to be paid when working with buyers, it has to be done through a buyer representation agreement where the compensation is predetermined before working with them. Practically speaking, it seems you always have the option of taking someone around the house without an agreement, but understand that you are working without an agreement to be paid.

If the buyer wants to work with you or you're going to have a continuing relationship where the buyer wishes to see other homes, then you will need to execute a buyer representation agreement.

3. Can listing agents show their listings to buyers without signing a buyer representation agreement?

Yes, if the listing agent is not representing the buyer and not being compensated for brokerage services being provided on behalf of the buyer.

4. Do I have to show a home if they're not offering a buyer agent commission?

Under the new rules, you will have agreed upon your compensation with the buyer using a buyer representation agreement prior to showing a home. As such, regardless of what the seller has or has not offered as a concession or as cooperative compensation, you and your buyer have agreed upon compensation in your buyer representation agreement. Thus, you should show the home.

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NAR Settlement FAQs: Showing Properties

5. Can you have separate buyer representation agreements for each property you show a buyer?

In theory, yes.

6. If a buyer meets me, but won't sign an agreement, do I have to show the house?

No.

7. If we have a skittish buyer who doesn't want to enter into an agreement until they spend some time with the agent, are we precluded from showing them any houses listed in the MLS?

Under NAR's settlement, you must now sign a buyer representation agreement before showing homes that you want to be compensated for selling as a buyer agent.

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NAR Settlement FAQs: Conversations with Buyers and Sellers

1. If you have a seller who is looking to list over the summer what conversations are you having with them now?

It's always a great time to sell your home if you can get the price and terms that you're looking for.

2. I want to communicate with my database. What is the safest way to do so and what should I say?

It's always a great time to buy the home you want if you can get it for the price you want. And it's always a great time to sell your home if you can get the price and terms you're looking for. These market dynamics have always been true and will always be true.

3. How do we handle current sellers that we have listed now that are coming back to us and stating that they don't want to pay buyer agent commission?

The fundamentals of selling a home haven't changed. We will offer your home for sale at a price that we believe the market will bear and that you're willing to sell for, we will market your home to expose it to all potential buyers, and we will consider any and all offers against your goals for selling.

4. What disclosures do I need to make to sellers and buyers?

Agents must disclose to prospective sellers and buyers that commissions are not set by law and are fully negotiable. This disclosure must be included in conspicuous language as part of any listing agreement, buyer representation agreement, and pre-closing disclosure documents. Please check with your broker about what forms should be used to make these disclosures.

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NAR Settlement FAQs: Impact on the Market

1. **Have times changed and now service professionals' market their prices?**

Service professionals have always had to explain their value and negotiate their prices with clients. Some professionals choose to market themselves as a low-cost provider. The work is the work and when professionals say they will take less, they more often than not do less.

2. **How will appraisals be affected? For example, if 7 out of 10 homes don't have buyer agent compensation as part of the sale and 3 of the 10 do, will the extra commission wrapped into the loan make it harder to appraise? Or will the agent commission come off the appraisal all together to get all the homes appraised using the same criteria?**

Appraisers don't do market value plus or market value minus, they just do market value.

3. **How do you see large-scale builders responding to this?**

Builders are professional sellers and they will most likely do whatever the market requires in order to move inventory in a timely fashion. If represented by an agent, the rules of the settlement still apply. Buyer agent's compensation will still be determined by what is in the buyer representation agreement.

4. **The news reporters make it sound like home prices are going to drop because now an agent's fee isn't "built-in" to the sales price.**

The one truth about real estate is the market determines the price. The laws of supply and demand govern real estate values in all markets at all times. Anyone who suggests anything else doesn't know what they are talking about.

5. **What will the impact be on the number of transactions sold, prices of homes, and leases?**

No one has a crystal ball, and that includes the media. People will still buy and sell houses in the same numbers that they were going to before these changes. Prices go up and prices come down, but over time the value of real estate always goes up.

Please remember that it is always the right time to buy or sell the right piece of real estate at the price that you're willing to accept.

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NAR Settlement FAQs: Lawsuits

1. What are the joining deadlines for any KW agents to be covered under the KW settlement?

KW agents are automatically included. KW agents do not need to do anything else to be covered under the KW settlement.

2. Does this settlement prevent copycat lawsuits from buyers?

Not necessarily. NAR's settlement resolves lawsuits that have been brought by home sellers. The lawsuits brought by home buyers will currently continue. However, if NAR's settlement is approved by the court, home sellers who are class members under NAR's settlement will be prohibited from pursuing claims as home buyers.

3. When will we know more about the details of the KWRI settlement?

On May 9, the court ordered final approval of KWRI's settlement. There were a few individuals who objected to the settlement, and they have through June 10 to appeal the court's final approval order. Under the settlement, all KW agents and KW Market Center Franchises are released from liability. Home sellers who are covered by the settlement also released their claims as home buyers. KWRI agreed to continue our policy of not requiring agents to join NAR, paid \$70,000,000, and agreed to make certain practice changes. We have shared how those practice changes will affect KW brokers and agents. KWRI admitted no wrongdoing by KWRI, KW agents, or KW Market Center Franchises.

4. Does this settlement prevent copycat lawsuits from sellers?

If approved by the court, NAR's settlement will resolve all the pending lawsuits brought by home sellers against NAR (and against anyone else who is released under the settlement, including agents who are members of NAR). The settlement will also prevent home sellers from filing new lawsuits based on past transactions. Like any settlement, new plaintiffs could try to bring new lawsuits based on future transactions. However, if the required changes are followed, the settlement takes away the liability arguments that the plaintiffs are currently making.

5. Will KW agents and/or franchises be liable for the payoff? Who will pay the payoff?

In 2023, KWRI paid a \$40M settlement, including attorney fees, on behalf of all KW agents and all KW Market Center Franchises to settle alleged TCPA violations. As far as the KW Sitzer-Burnett settlement is concerned, the same will be true. KW agents and KW Market Center Franchises will not come out of pocket for this settlement or attorney fees. It remains to be seen how NAR will be handling its settlement and what that will mean for all other non-KW members. NAR has simply stated that it will not change membership dues for 2024 or 2025 because of the settlement.

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NAR Settlement Simplified

Below is the current timeline for NAR's settlement and mandatory MLS policy changes.

June 18, 2024	Deadline for MLSs to opt into NAR's settlement
August 17, 2024	NAR's mandatory MLS policy changes take effect. These changes implement the practice changes NAR agreed to make in its settlement.
August 17, 2024	REALTOR MLSs must implement the mandatory MLS policy changes.
September 16, 2024	Deadline for non-REALTOR MLSs opting into NAR's settlement to implement the practice changes in the settlement.
November 26, 2024	Sitzer Court will hold a final approval hearing on NAR's settlement.

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