



NAR SETTLEMENT UPDATE

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Burnett/Sitzer

- Group of home sellers in Kansas City, Missouri filed antitrust lawsuit against NAR and corporate brokerage defendants.
- Alleging “cooperative compensation policy” and how the policy was carried out violates antitrust laws.
- Trial and jury verdict in Oct. 2023.





Moehrl, Umpa, Gibson

- Moehrl was filed in 2019 in Illinois.
- Umpa and Gibson filed in Kansas City, MO in wake of Burnett/Sitzer verdict with additional defendants. Plaintiffs seeking nationwide class action status with potentially \$200+ billion in damages.
- Same facts, rules, and practices under the microscope.





Settlement Agreement

On Friday, March 15th, 2024 NAR announced a settlement agreement which includes the following provisions:

- Offers of compensation moved off the MLS (expected rule change in July 2024).
- Written agreements to be mandated for MLS participants representing buyers
- Settlement payment of \$418 million over four years
- Release of liability includes NAR, state and local associations, MLSs and brokerages with \$2B or less in transaction volume (in 2022)
- MLSs must also make practice changes (paragraph 68, et. seq.)
- **Subject to court approval**





Settlement Agreement

(H)(58)(ii):

Prohibit REALTOR MLS Participants, subscribers, other real estate brokers, other real estate agents and their sellers from (a) making offers of compensation on the MLS to buyer brokers or other buyer representatives (either directly or through buyers) or (b) disclosing on the MLS listing broker compensation or total broker compensation.





Settlement Agreement

(H)(58)(iii):

Require REALTOR MLSs to (a) eliminate all broker compensation fields on the MLS and (b) prohibit the sharing of the offers of compensation to buyer brokers or other buyer representatives... via any other REALTOR MLS field;



Settlement Agreement

(H)(58)(v):

NAR will agree not to create, facilitate or support any non-MLS mechanism (including providing listing information to an aggregators' website for such purpose) for listing brokers or sellers to make offers of compensation to buyer brokers or other buyer representatives (either directly or through buyers), however, this provision is not violated by

(a) a REALTOR MLS providing data or data feeds to a REALTOR, REALTOR MLS Participant, or third party unless the REALTOR MLS knows those data or data feeds are being used directly or indirectly to establish or maintain a platform for offers of compensation from multiple brokers; or

(b) a REALTOR or REALTOR MLS Participant displaying both (1) data or data feeds from a REALTOR MLS and (2) offers of compensation to buyer brokers or other buyer representatives but only on listings from their own brokerage.



Settlement Agreement

(H)(58)(vi):

Unless inconsistent with state or federal law or regulation... require that all REALTOR MLS Participants working with a buyer enter into a written agreement before the buyer tours any home with the following:

(a) to the extent that such a REALTOR or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined;

(b) the amount of compensation reflected must be objectively ascertainable and may not be open-ended;

(c) such a REALTOR or Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.



Settlement Agreement

(H)(58)(viii):

Require REALTORS and REALTOR MLS Participants acting for sellers to conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent, or other representative acting for buyers; and such disclosure must be in writing, provided in advance of any payment or agreement to pay to another broker acting for buyers, and specify the amount or rate of any such payment;





Settlement Agreement

(H)(58)(ix):

Require REALTORS and REALTOR MLS Participants to disclose to prospective sellers and buyers in conspicuous language that broker commissions are not set by law and are fully negotiable (a) in their listing agreement if it is not a government-specified form, (b) in their agreement with buyers if it is not a government-specified form, and (c) in pre-closing disclosure documents if there are any and they are not government-specified forms.





Settlement Agreement

(H)(58)(ix) cont'd:

NAR shall also require that REALTOR Member Boards and REALTOR MLSs, to the extent they publish form listing agreements, buyer representation agreements, and pre-closing disclosure documents for use by REALTORS, Participants, and/or subscribers, must conform those documents to this paragraph.





Settlement Agreement

(H)(68)(xi) cont'd:

REALTOR MLSs and non-REALTOR MLSs must require that MLS participants and subscribers must not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer broker or other buyer representative assisting the buyer.





Settlement Agreement

(H)(58)(xiii):

The practice changes...in this Settlement Agreement shall not (a) prevent offers of compensation to buyer brokers or other buyer representatives off of the multiple listing service; or (b) sellers from offering buyer concessions on a REALTOR MLS (e.g., for buyer closing costs), so long as such concessions are not limited to or conditioned on the retention of or payment to a cooperating broker or buyer broker;





Settlement Timeline

- Motion for Preliminary Approval (filed April 19)
 - Starts the 60 day timeline for REALTOR MLSs, and high volume brokerages (\$2B+ transaction volume) and Non-REALTOR MLSs to opt in to settlement
 - June 18, 2024 is deadline
- NAR implements practice changes (anticipated mid-July 2024)
- Class Notice (earliest is August 17, 2024, which is 120 days after MPA)
- Final Approval of Settlement (late December or early 2025)
 - Potential Hurdles to Settlement (DOJ involvement, copycat plaintiff attorneys objections, presiding judge)





Best Practices to Avoid Antitrust Liability

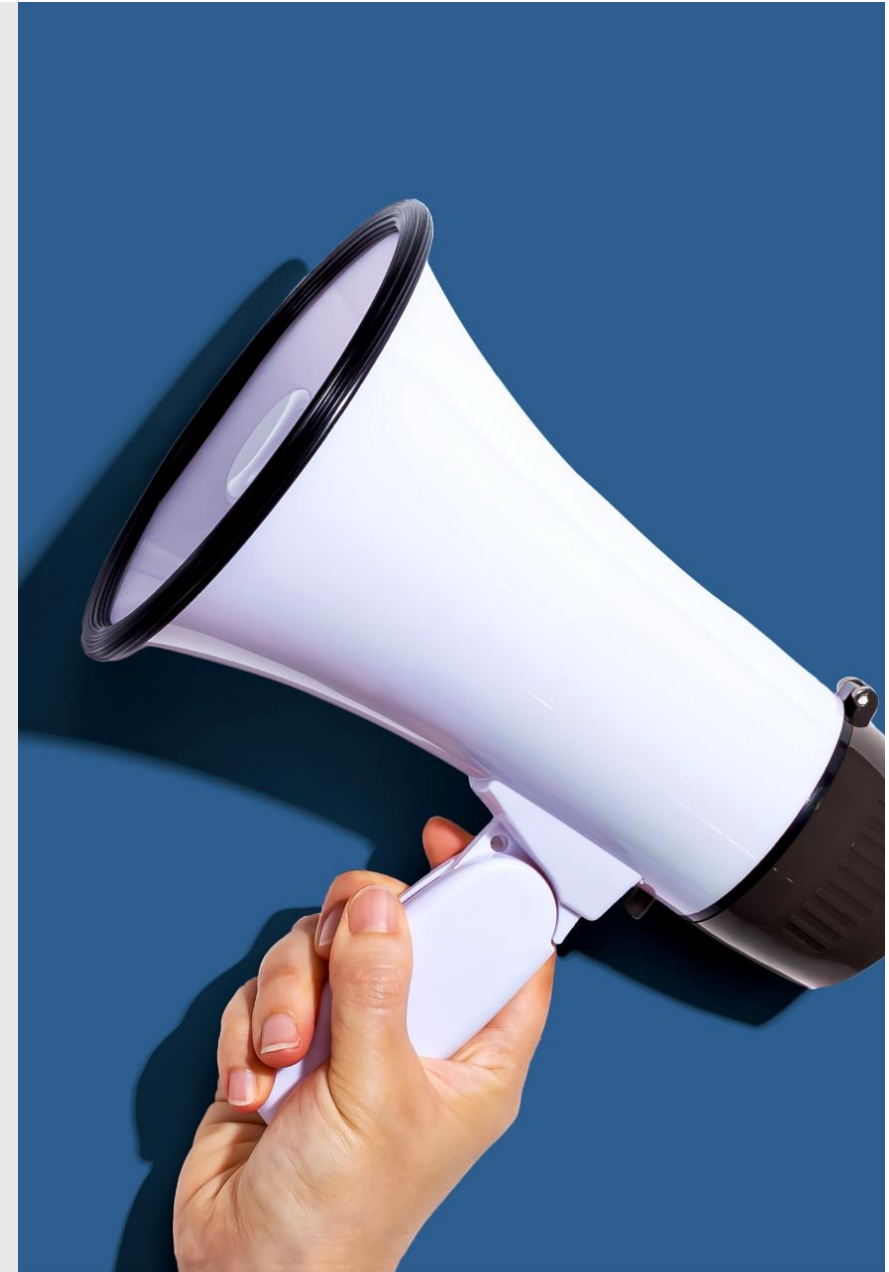
- Never agree to fix pricing with competitors
- Never agree with competitors to boycott or refuse to deal with another broker or business
- Never agree with competitors to divide up markets, customers or practice areas
- Never contribute to anti-competitive discussions





What Does This Mean For You?

- Imperative that REALTORS continue to express:
 - Commissions are set between brokers and their clients, not by law or by rule
 - Compensation is always negotiable, there is no “set compensation rate”
 - REALTOR value, at every chance. Remind consumers of all the ways REALTORS help their clients navigate buying and selling a home (see [competition.realtor](#) and [facts.realtor](#)).





What Does This Mean For You?

- Associations are included as released parties.
- REALTOR MLSs (and non-REALTOR MLSs) must agree to be bound by the practice changes in Paragraph 68 and cooperation terms in Paragraph 69, including by executing Appendix B and emailing to plaintiff counsel within 60 days of the filing of the first motion for preliminary approval (June 18, 2024).
- Update any and all forms to conform with settlement agreement.
- Work with legal counsel.





QUESTIONS



Additional Information

- www.nar.realtor/the-facts
- www.ohiorealtors.org
- Legal Library
- Legal Forms
 - Contract
 - Buyer Representation Agreement Template
- The Buzz
 - More Buzz About/Legal

