

Many NAHB members have questions about the 2024 court-approved settlement agreement in the antitrust class action case *Moehrl v. National Association of Realtors, et al.*, Case No. 19-cv-01610 (N.D. Ill.). This settlement resolves claims against the National Association of Realtors (NAR) and several large real estate brokerage firms, as well as claims in other similar cases filed against NAR.

Please note there is ongoing litigation involving similar claims. This document specifically addresses the settlement mentioned above. It is intended to provide general information and is not a substitute for legal advice. For any legal questions, we advise you to consult with an attorney licensed in your state.

DEFINITIONS

Multiple Listing Service (“MLS”): A private database created, maintained, and paid for by real estate professionals to share details about properties for sale in a particular region.

MLS Participant: An individual responsible for ensuring that all affiliated subscribers (users of MLS) comply with the rules, regulations, and policies of the MLS. There can only be one MLS Participant per real estate firm/brokerage.

National Association of Realtors (“NAR”): A membership-based trade association for real estate professionals.

Real Estate Agent (“Agent”): A licensed professional who works with clients to buy and sell property. Agents are required to affiliate with a broker.

Real Estate Broker (“Broker”): A licensed professional who works with clients to buy and sell property with additional training and licensing beyond that of a real estate agent. Unlike agents, brokers may work independently and can start their own real estate firms, where they may hire and manage agents.

REALTOR®: A licensed agent who is an active member of NAR.

BACKGROUND

1. What are the key terms of the settlement?
 - The settlement agreement prohibits communicating offers of compensation on a Multiple Listing Service. Offers of compensation must be negotiated separately. This means the seller negotiates compensation with their broker/agent and the buyer negotiates compensation with their broker/agent.
 - Agents and brokers working with buyers must enter into a written agreement with their buyers before taking buyers to tour a home.
2. Who is released by the settlement?
 - The settlement releases members of NAR as of the date of the class notice (August 17, 2024) unless you are an employee of a remaining defendant¹ or an individual NAR member with 2022 total transaction volume for residential home sales below \$2 billion. It also releases non-NAR members who opted into the settlement.
3. Who is subject to the practice changes?
 - Everyone who is released by the settlement agreement.

COMMISSIONS

4. Offers of compensation are prohibited on the MLS. But can a seller make offers of compensation elsewhere?
 - Yes. For example, a builder can provide offers of compensation on its website.
5. Who is responsible for paying a buyer’s broker’s fee?
 - Buyers are responsible for compensating their agents/brokers and offers of compensation must be negotiated off-MLS.

¹ HomeServices of America and its related companies are not released under this settlement. The *Gibson/Umpa* cases will have their own settlements.

6. How will a buyer's real estate agent/broker get paid?
 - Through a portion of the listing broker's compensation. A buyer can request that the listing broker pay the buyer's broker directly.
 - Through a concession from the seller.
 - Fixed-fee commission paid directly to the agent/broker by the buyer.
 - This is not an exhaustive list, and compensation continues to be negotiable.
7. Can a builder pay the buyer's broker's commission directly to the buyer's agent/broker (and not the buyer)?
 - There is no language in the settlement agreement that prohibits this activity. Regardless of how the buyer's agent/broker is paid, the broker has a duty to let their client (the buyer) know how much compensation they are receiving for the transaction.
8. Can the buyer's broker/agent be paid *before* settlement (e.g. the builder pays the buyer's broker/agent at "time of slab.")?
 - There is no language in the settlement agreement that prohibits this activity. Typically, brokers/agents' commissions are paid at the time of settlement.
 - The standard buyer agency agreement provides that the commission is paid at time of settlement. If this language is in your contract, you are at risk of breaching your contract by paying commission before settlement.
9. If the builder or seller pays the buyer's broker/agent commission before closing, how is that addressed on the Closing Disclosure (CD) or Settlement Statement (HUD-1)?
 - The parties should work directly with their title company to account for commissions and credits on the CD or HUD-1.

WRITTEN AGREEMENTS

10. Can the seller or builder *require* the buyer and/or the buyer's broker/agent to provide a copy of the buyer agency agreement when they bring a buyer to tour a property?
 - No. In fact, they should **not** ask to see the buyer agency agreement. The intention of the settlement agreement is to prohibit either party from making decisions on whether to show or tour a property based on compensation, and the buyer agency agreement provides compensation information.
 - Under the settlement, Multiple Listing Services (MLS) are responsible for enforcing the rule regarding written agreements.
11. If an MLS Participant hosts an open house or provides access to a property, on behalf of the seller only, to an unrepresented buyer, will they be required to enter into a written agreement with those buyers touring the home?
 - No. Only buyers' brokers/agents are required to enter into an agreement with their client (the buyer) before touring a home.
12. When are written buyer agency agreements required to be executed?
 - If a buyer wants representation², they will be required to sign a formal written agreement with an agent to represent them in a real estate transaction and agree to compensation (just as the seller does).
 - The agreement must be signed before the broker/agent takes a buyer to tour the home. This seems to be the "cut off" by when an agreement must be signed but signing one earlier protects both parties and provides transparency.
 - Note: this requirement might vary from state-to-state. For example, Maryland law already requires the use of written buyer agency agreements *before providing any real estate brokerage services*.
13. Who should join the settlement class?
 - Anyone who has sold a home in recent years *may* be eligible to join the settlement class. There are multiple settlements and eligibility requirements vary by state.
 - You can call the settlement administrator at 888-995-0207 to find out if you qualify.
14. Additional Resources:
 - **NAR Settlement FAQs**
 - Official website/file a claim: **Residential Real Estate Broker Commissions Antitrust Settlements Welcome Page (realestatecommissionlitigation.com)**

² Buyers are not required to have representation to buy property.