

GCAAR Town Hall with NAR

On April 30, 2024, GCAAR hosted a town-hall webinar for members about the NAR settlement featuring NAR Senior Counsel, Director Legal Affairs Matt Troiani and NAR Vice President of Public Relations and Communications Strategy Mantill Williams. Below is a comprehensive summary of the questions asked and answers provided during the session, including responses to questions that could not be answered live due to time constraints.

Note that this information is intended for reference only and is not meant to provide legal advice or representation.

Please refer to facts.realtor for continuously updated information for NAR members related to the settlement. To obtain information and resources to share with clients, visit competition.realtor.

Questions & Answers

1. How does the settlement affect article 3 of the NAR Code of Ethics? Specifically, will buyers and buyer agents be able to negotiate offers for compensation after viewing the property?

Answer:

- A buyer can request the listing broker to pay compensation to the buyer broker.
- An offer of compensation will still have to be accepted by a cooperating buyer or broker. When negotiating, the best way to do that is before showing the property and before writing an offer.
- Best practice is to have a call with the listing agent about compensation before touring/showing.
- It is permissible for the buyers/sellers to agree on the compensation, that the seller can agree to compensate the buyer's agent directly.

2. How is this going to impact the way we charge commissions and how buyer brokers get paid?

Answer:

- Offers of compensation will continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals.
- Listing brokers should inform their clients that offers of compensation will 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 (ex. concessions for buyer closing costs).
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.
- 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

3. Will individual brokers be able to advertise their commissions, including cooperative compensation?

Answer:

- Yes, just not on the MLS.

4. What will happen to existing listings when the practice changes take effect in the MLS?

Answer:

- If the contract has been ratified already, no further action.
- If the contract has not been ratified and there is an offer of compensation, get a written agreement because it will be taken off the MLS.
- Listing agreements – unlikely to have further actions.
- See [Litigation FAQ #39](#) on facts.realtor.

5. What if I am the listing agent showing a property to an unrepresented buyer, do I need to have an agreement with them or provide any disclosures?

Answer:

- Open house – working for the seller – no written agreement with the buyer but may need to give specific disclosures.

6. What does working with a buyer mean, to trigger the requirement of a written agreement?

Answer:

- No pre-existing relationship.

- Represent buyer's interests.
- Not already working with the seller.
- MLS Participants and buyers will still be able to enter into any type of professional relationship permitted by state law.
- NAR policy does not dictate:
 - What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
 - The term of the agreement (e.g., one day, one month, one house, one zip code).
 - The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
 - The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

7. Does the settlement specify the terms of a written agreement with a buyer?

Answer:

- The written agreement must include:
 - A specific and conspicuous disclosure of the amount or rate of compensation the participant will receive or how this amount will be determined, to the extent that the participant will receive compensation from any source;
 - the amount of compensation in a manner that is objectively ascertainable and not open-ended;
 - a term that prohibits the participant from receiving compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer; and
 - a conspicuous statement that broker fees and commissions are not set by law and are fully negotiable.

8. Do you expect brokerages will need to have attorneys draft additional agreements for buyer broker commissions?

Answer:

- Will be drafted by the associations.
- Brokerage can retain counsel to create the forms.

9. When can members expect updates to NAR policies?

Answer:

- August 17, 2024

10. Before a showing tour, do we need to successfully call and get in writing the offer of compensation from each listing agent before finalizing the tour?

Answer:

- Yes, this is a best practice. Please refer to the [Code of Ethics](#), Article 3, Standard of Practice 3-1.

11. The Burnett ruling changed the calculus towards settlement. Why did the rhetoric from NAR regarding fighting the lawsuit(s) not change?

Answer:

- In public statements to its members, the public and the media, NAR has always maintained throughout the process that settlement was an option.

12. Did you say that you cannot show a buyer who is a customer the property any longer – you only can show clients?

Answer:

- All buyer relationships (customer and client) must have something in writing prior to showing any property [full rep agreement, one-time showing agreement, limited services agreement etc.] that explains your relationship and services the agent is providing.

13. Where is the link to the timeline Matt spoke about?

Answer:

- <https://www.nar.realtor/the-facts>
- <https://www.nar.realtor/competition-in-real-estate>

14. How will buyer agency apply to rentals?

Answer:

- The proposed settlement agreement—like the Sitzer-Burnett lawsuit and the copycat lawsuits—is focused on residential real estate sales transactions.

15. Will the MLS be adding a section for "Sellers closing assistance" after the changes are implemented as they had suggested?

Answer:

- You'll want to talk to the MLS, just ensure that the seller concessions are not limited to or conditioned upon the retention of or payment to a cooperating broker, buyer broker or other buyer representative.

16. Does GCAAR plan to build a simple online repository where listing agents can enter potential seller compensation for a listing?

Answer:

- No, because the repository would be too similar to the MLS.

17. To be clear, the documents section in the MLS cannot include an offer of compensation from the listing agent?

Answer:

- The document section cannot include information on the offer of compensation. No information on the MLS (listing, disclosure, or linked website) can include offer of compensation information.

18. Will the MLS be adding a section for "Sellers closing assistance" option in the MLS after the changes are implemented as they had suggested?

Answer:

- Yes, Bright MLS will be adding a new field. They are currently working on the name for the new field.

19. Can an agreement of compensation between brokers be affirmed in the sales contract, or should it?

Answer:

- Offers of compensation from the listing broker to the buyer broker may be in the form of a written agreement between brokerages. Seller concessions and/or seller agreement to pay buyer broker compensation directly may be included in the purchase and sale contract.
- See [Litigation FAQ # 44](#) for more.

20. Are buyers who have less liquidity at a disadvantage when in competing offer situations?

Answer:

- 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.

21. What's to hold a verbal consent for compensation?

Answer:

- 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.

22. Would that request need to be a separate addendum?

Answer:

- See your local counsel or forms provider for a recommendation on whether seller concessions and/or compensation from seller to buyer broker is included in the purchase and sales contract or addendum.

23. What is the basis of removing compensation from MLS? Was is the idea that agents supposedly steered buyers to properties that offered "higher" comp? Likely there's more to it than just that?

Answer:

- See [Litigation FAQs](#) # 1 – 5, 77 – 80.

24. VA buyers cannot pay commissions, as a standard, how will the settlement effect VA buyers who may now have to pay compensation to their buyer agent?

Answer:

- VA buyers still need representation. NAR believes the VA should revisit this issue.
- Currently, the compensation has to remain on the seller's side of the debts.

25. How will the settlement and VA financing impact states that have military status as a protected class?

Answer:

- See response to question #25.
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26. What will happen to sub-agency?

Answer:

- Where permitted, it is still ok. What is important is making sure buyers know what everyone's role is. You still need a written agreement since the sub-agent works for the seller – you must discuss with transparency of representation.