

# Changes to our Industry

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General Counsel, Florida Realtors

*Florida REALTORS® is devoted to improving the competitive business conditions of the real estate industry. This meeting may include real estate professionals and other industry stakeholders who compete with each other or work for competing businesses.*

*Florida REALTORS® is committed to conducting all meetings and events in a professional, ethical, and lawful manner, including in adherence to all antitrust laws. To that end, the topics for this meeting will focus on advancing the interests of real estate professionals and consumers of real estate services, increasing competition, reducing risk for all parties involved in real estate transactions, and sharing insights on business best practices.*

*The following discussion topics are always prohibited: agreements to fix prices, limit product or service offerings, allocate geographical territory or customers, and refuse to deal. Any discussion inconsistent with this policy will not be tolerated.*

## Antitrust

# Litigation

# What's Going On?


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- NAR and 4 corporate (brokerage) defendants were sued in lawsuits filed in Missouri (plaintiff “Burnett”) and Illinois (plaintiff “Moehrl”) alleging commission rates are too high, buyer brokers are being paid too much, and NAR’s Code of Conduct and MLS Handbook along with the corporate defendants’ practices lead to price fixing.
  - Note: In September 2023, Anywhere Real Estate (formerly Realogy) and RE/MAX settled with the plaintiffs. Terms of the respective settlement agreements will be made public when are filed for the court’s approval.
- NAR and the corporate defendants adamantly disagree, and NAR’s rules are very intentionally pro-consumer and pro-competitive.



# What is NAR Doing to Prepare Legally?

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- NAR has the very best inside and outside legal teams in place to defend these very pro-consumer, pro-competitive rules and practices in local MLS broker marketplaces.
  - Our legal experts are confident we will ultimately prevail in each case because we act in the best interests of consumers, and the law and facts are on our side.
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# What Are the Key Points We Are Making?

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- We fundamentally disagree with how class action attorneys are characterizing our rules. At the heart of all this is that very much because of NAR's rules and how well local MLS broker marketplaces function, consumers are better off and competition is able to thrive.
- The very reason NAR exists is because there was a need 100 years ago for a higher level of ethical practice in real estate – that's where NAR came in. We want to make it very clear that:
  - REALTORS® look out for their clients above all else.
  - Compensation is set between brokers and their clients and is negotiable.
  - The free market and competition are encouraged by NAR.
  - There's incredible value in using a real estate agent, especially a REALTOR®, when you buy or sell your home.
- In fact, Article 1 of the NAR Code of Ethics requires a REALTOR® to “protect and promote the interests of the client.” NAR has a rule that negotiations are allowed at any time. NAR has rules that prohibit anti-trust behavior.



## What Are Possible Outcomes From the Trial?

- The optimal scenario is an immediate win in the trial. Otherwise, one outcome is a monetary damage award against the defendants. Or there could be a court order changing NAR's policies or how commissions are paid to brokers.
  - It is highly likely that no matter which side prevails at trial, the losing side will appeal. That means a definitive ruling is not imminent. It will likely be several years before we reach a conclusion.
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# Settlements





## How Do the Recent Settlements from Anywhere, RE/MAX and MLS PIN Affect NAR's Case?

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- Settlement is always an option for any party in litigation. These settlements don't change how the case is presented to the court or NAR's commitment to defend ourselves.
  - We are confident we will prevail in proving the lawfulness of the rules under attack. Pro-competitive, pro-consumer local MLS broker marketplaces ensure equity, efficiency, transparency and market-driven pricing options for home buyers and sellers.
  - Also worth noting is that MLS PIN admitted no wrongdoing, and the settlement does not definitively address the practice of listing brokers making offers of compensation to buyer brokers. In litigation against NAR, we are seeking outcomes that will protect this pro-consumer, pro-competitive practice and all members.
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## What about Anywhere Real Estate and RE/MAX and Redfin saying they will not require their agents to maintain an NAR membership?

- Brokerages are independent entities that make their own business decisions, and it is incumbent on every REALTOR® association – local, state and national – to continue to communicate and provide true value to members. If brokers continue to find value in belonging to the association, then people will choose to belong.
- Membership in NAR pays for everything from federal advocacy efforts that benefit all REALTORS® and their clients and a nationwide consumer marketing campaign that differentiates REALTORS® from real estate agents to member education; legal and consumer materials; and industry research and technology

What about Anywhere Real Estate and RE/MAX and Redfin saying they will not require their agents to maintain an NAR membership?

- Common membership benefits at local REALTOR® associations include training; support for local, state and federal advocacy efforts; community outreach; standard forms; dispute resolution (arbitration and mediation); access to the local broker marketplace (MLS); lockbox systems; CRM services; reporting; networking with other real estate professionals and related service providers; and more.
- Members also get reputational benefit with being affiliated with the REALTOR® brand, which is synonymous with more ethical and more expert real estate agents

# Multiple Listing Services

# What do NAR policies require for an offer of compensation in MLS broker marketplaces?

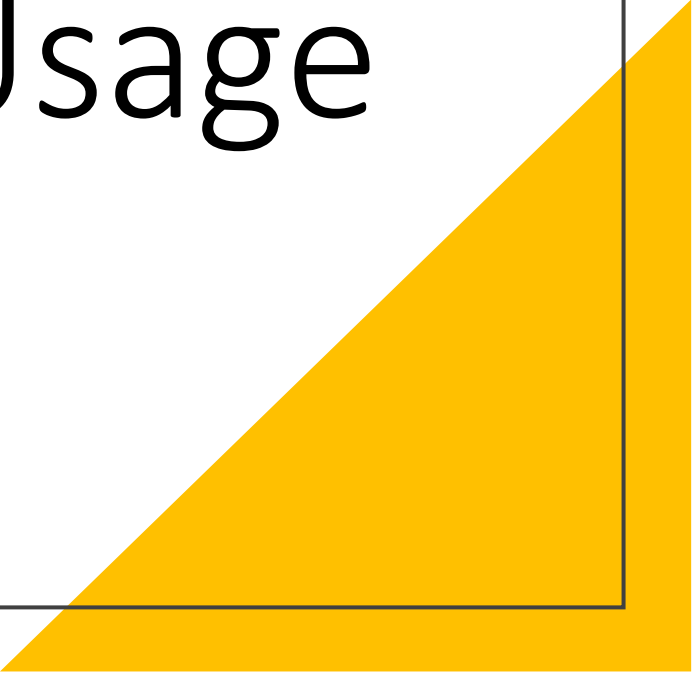
- NAR's policies require that an offer of compensation be made without specifying an amount. Practically speaking, the difference between an offer of one penny and \$0 is negligible, and regardless, those offers are always negotiable.
- NAR has long said listing brokers and their clients are the ones who determine the amount and makeup of the offer to cooperating brokers. NAR's policies are designed to ensure information is efficiently shared in local MLS broker marketplaces to facilitate the transaction of real estate to the benefit of buyers and sellers. So long as cooperating brokers are aware of the offers made by listing brokers, that purpose is achieved.

# What do NAR policies require for an offer of compensation in MLS broker marketplaces?

- Without these policies, brokerages would not know important information about listings, and they would have to rely on piecemeal information collected in inefficient ways that could negatively affect their ability to serve their clients.

<b>Listing Agreements</b>	<b>COUNT_2023</b>	<b>Buyer Broker Agreements</b>	<b>COUNT_2023</b>
Exclusive Right of Sale Listing Agreement, Transaction Broker	76777	Exclusive Buyer Brokerage Agreement, Transaction Broker	11496
Exclusive Right of Sale Listing Agreement, Consent to Transition to Transaction Broker	13115	Exclusive Buyer Brokerage Agreement, Consent to Transition to Transaction Broker	2907
Exclusive Right Of Sale Listing Agreement, Single Agent	4961	Exclusive Buyer Brokerage Agreement, Single Agent	3253
Exclusive Right of Sale Listing Agreement, No Brokerage	1209	Exclusive Buyer Brokerage Agreement, No Brokerage Relationship	871
<b>Misc. Forms</b>			
Exclusive Right of Sale Listing Agreement for Commercial Property	4563		
Exclusive Brokerage Listing Agreement	9543		

# Forms Usage



# Buyer Broker Agreement

7. **COMPENSATION: Broker's** compensation is earned when, during the term of this Agreement or any renewal or extension, **Buyer** or any person acting for or on behalf of **Buyer** contracts to acquire real property as specified in this Agreement. **Buyer** will be responsible for paying **Broker** the amount specified below plus any applicable taxes but will be credited with any amount which **Broker** receives from a seller or a real estate licensee who is working with a seller.

(a) **Purchase or exchange:** \$ \_\_\_\_\_ or \_\_\_\_\_ % (select only one); or \$ \_\_\_\_\_ or \_\_\_\_\_ % plus \$ \_\_\_\_\_ (select only one) of the total purchase price or other consideration for the acquired property, to be paid at closing.

(b) **Lease:** \$ \_\_\_\_\_ or \_\_\_\_\_ % (select only one); or \$ \_\_\_\_\_ or \_\_\_\_\_ % plus \$ \_\_\_\_\_ (select only one) of the gross lease value, to be paid when **Buyer** enters into the lease. If **Buyer** enters into a lease-purchase agreement, the amount of the leasing fee which **Broker** receives will be credited toward the amount due **Broker** for the purchase.

(c) **Option: Broker** will be paid \$ \_\_\_\_\_ or \_\_\_\_\_ % of the option amount (select only one), to be paid when **Buyer** enters into the option agreement. If **Buyer** enters into a lease with option to purchase, **Broker** will be compensated for both the lease and the option. If **Buyer** subsequently exercises the option, the amounts received by **Broker** for the lease and option will be credited toward the amount due **Broker** for the purchase.

(d) **Other: Broker** will be compensated for all other types of acquisitions as if such acquisition were a purchase or exchange.

(e) **Buyer Default: Buyer** will pay **Broker's** compensation immediately upon **Buyer's** default on any contract to acquire property.



# Commission Agreement

In the event the Property is (**Check as applicable**)  sold, optioned, or contracted to be sold  leased to Prospect, or any other prospect procured by **Broker**, on \_\_\_\_\_ [date] or within \_\_\_\_\_ days (180 days if blank) thereafter, **Seller/Landlord** agrees to pay **Broker**:

\$ \_\_\_\_\_

\_\_\_\_\_% of the gross purchase price of the Property.

\_\_\_\_\_% of the gross lease value of a lease executed regarding the Property.

other (specify) \_\_\_\_\_

**Seller/Landlord** will pay **Broker's** fee in the event of sale, at time of closing the sale; or in the event of lease, at time of lease execution. **Broker's** fee is due if **Seller/Landlord** defaults on an executed sales contract or lease with Prospect or if **Seller/Landlord** agrees with Prospect to cancel an executed sales contract or lease. In any litigation arising out of this agreement, the prevailing party will be entitled to recover from the non-prevailing party reasonable attorney's fees, costs, and expenses.

# Education

# Comprehensive Guide from NAR

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## FOSTERING COMPETITION REALTOR® TOOLKIT

### Introduction

*There are some – including class action attorneys motivated by self-interests – who are raising questions about the benefit of local MLS broker marketplaces\* and REALTORS®. Each of us recognizes local real estate – buoyed by REALTORS® – is pro-consumer and pro-competitive. It's important that we continue to find ways to communicate and amplify these realities to clients, consumers, media and other interested parties.*

*To that end, there are three communications toolkits to help explain the benefits of local broker marketplaces and REALTORS®:*

- **Fostering Competition (this toolkit): Primarily business and economics storytelling**
- *Consumer Access & Opportunity: Primarily business and consumer storytelling*
- *REALTORS® as Champions: Primarily consumer storytelling*

*These toolkits contain a variety of communications materials that can be used as is or customized for local markets. You also can cut and paste relevant portions to share with members, as appropriate.*

*If you have any questions about this or other toolkits, please contact Mantill Williams ([MWilliams@nar.realtor](mailto:MWilliams@nar.realtor)) in NAR communications or Lesley Muchow ([LMuchow@nar.realtor](mailto:LMuchow@nar.realtor)) in NAR legal.*

*Additional references and sites you can share, when pertinent, include [competition.realtor](http://competition.realtor) (or the landing page [competitioninrealrestate.com](http://competitioninrealrestate.com) to send someone directly to the "Fostering Competition" section) or [RealEstateCommissionFacts.com](http://RealEstateCommissionFacts.com), if there's a need to refer someone to content solely focused on how compensation works.*

<http://competitioninrealestate.com/>

<https://www.realestatecommissionfacts.com/>

### Who is it for?

The Accredited Buyer's Representative (ABR®) designation is for real estate buyer's agents who focus on working directly with buyer-clients at every stage of the home-buying process.



## You Need CE Classes — Here's Where to Find Them

Florida Realtors, along with trusted education partners, offers a variety of classroom, online and virtual education options for Realtors.

## LOCAL MLS BROKER MARKETPLACES IN ACTION

Multiple Listing Services (MLSs) are independent broker marketplaces that connect buyers and sellers of real estate in the U.S. through their respective agents. Local MLS broker marketplaces give first-time, low-income and other buyers better access to the American dream of homeownership while also exposing a seller's property to the greatest number of potential buyers.

### WHAT LOCAL MLS BROKER MARKETPLACES DO FOR YOU:

Largest databases of available homes



Most up-to-date home status information



Maximized visibility of homes for sale



Verified, trusted, detailed and accurate property information



Facilitate cooperation between buyer and seller brokers



Equal opportunity for all home buyers and sellers



Easy to find the agent selling the home



Level playing field between large and small brokerages



### A WORLD

### WITHOUT LOCAL MLS BROKER MARKETPLACES:



No centralized source of available homes



Outdated home status information



Fewer homes for buyers to choose from on real estate websites



Unverified, inaccurate and unreliable property information



Buyers/sellers would likely have to pay to list on websites



Residents without access to brokerages would have fewer options



Inconsistent broker information in listings across marketplace



Markets become broker-controlled

REALTORS® are members of the National Association of REALTORS®





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# Is It Time to Introduce Buyer Representation Agreements?

By Audrey Lee for Florida Realtor magazine

If you're a buyer's agent, are you using buyer representation agreements? Here's why you might want to consider it

# How Buyer Agreements Boost Your Value, Fend Off Claims

May 5, 2023

Working With Buyers, Legal

By: Melissa Dittmann Tracey



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It's an opportunity to explain to your clients what your role is in the transaction and how they'll benefit from your services.



Real estate agents don't always ask their clients to sign a buyer representation agreement—but there are plenty of reasons they should, according to the National Association of REALTORS®' latest "Window to the Law" video. Such an