

## 1. Why did NAR enter into this settlement?

- Since the litigation began, we have worked consistently to reach a resolution with the plaintiffs.
- We have always wanted to reduce the significant strain on our members and provide a path forward for the industry and, from the beginning of this litigation, we had two goals:
  - Secure a release of liability for as many of our members, associations, and MLSs as we could; and
  - Preserve the choices consumers have regarding real estate services and compensation.
- This proposed settlement achieves both of those goals and provides a path for us to move forward and continue our work to preserve, protect, and advance the right to real property for all.

## 2. What are the key terms of the agreement?

- **Release of liability:** The agreement would release NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all association-owned MLSs, and all brokerages with an NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
  - NAR fought to include all members in the release and was able to ensure more than one million members are included.
  - Despite NAR's efforts, agents affiliated with HomeServices of America and its related companies—the last corporate defendant still litigating the *Sitzer-Burnett* case—are not released under the settlement, nor are employees of the remaining corporate defendants named in the cases covered by this settlement.
- The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.

**Compensation offers moved off the MLS:** NAR has agreed to put in place a new rule prohibiting offers of compensation *on the MLS*. Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions for buyer closing costs). This change will go into effect in mid-July 2024.

**Written agreements for MLS participants acting for buyers:** While NAR has been advocating for the use of written agreements for years, in this settlement we have agreed to require MLS participants working with buyers to enter into written representation agreements with their buyers. This change will go into effect in mid-July 2024.

**Settlement payment:** NAR would pay \$418 million over approximately four years. This is a substantial sum, and it will be incumbent on NAR to use our remaining resources in the most effective way possible to continue delivering on our core mission. NAR's membership dues for 2024 will not change because of this payment.

**NAR continues to deny any wrongdoing:** NAR has long maintained — and we continue to believe — that cooperative compensation and NAR's current policies are good things that benefit buyers and sellers. They promote access to property

ownership, particularly for lower- and middle-income buyers who can have a difficult-enough time saving for a down payment. With this settlement, NAR is confident it and its members can still achieve all those goals.

**3. Does this settlement mean that NAR is admitting that plaintiffs' allegations are true?**

- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the Multiple Listing Service (MLS) cooperative compensation model rule (MLS Model Rule).
- It has always been NAR's goal to resolve this litigation in a way that preserves consumer choice and protects our members to the greatest extent possible. This settlement achieves both of those goals.
- This agreement significantly reduces liability nationwide for over one million NAR members, all state/territorial and local REALTOR® associations, association-owned MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below. Ultimately, continuing to litigate would have hurt members and their small businesses.
- The agreement provides a path forward for our industry and NAR.

**4. What if an agent has different releases under the settlement (e.g., moved between brokerages)? Are they covered by the release in this settlement agreement?**

- The release covers most NAR members for the entire time period, and even if an agent is not covered for some of the time period, they may be covered for others for the time they were not affiliated with HomeServices and its related companies.

**5. By changing the cooperative compensation policy, aren't you admitting that it was problematic?**

- No. The settlement makes clear that NAR continues to deny any wrongdoing in connection with the Multiple Listing Service (MLS) cooperative compensation model rule (MLS Model Rule).
- NAR has long maintained — and we continue to believe — that cooperative compensation and NAR's current policies are good things that benefit buyers and sellers. They promote access to real property ownership, particularly for lower- and middle-income buyers who can have a difficult-enough time saving for a down payment. Real estate laws in many states authorize offers of compensation.
- With this settlement, NAR is confident it and its members can still achieve all those goals.

**6. Is it possible for offers of compensation to be conveyed through channels other than the MLS?**

- Yes. Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions for buyer closing costs).

**7. Will this prohibition save money for sellers or buyers?**

- 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.

#### **8. How does the settlement affect MLSs?**

- The agreement would release association-owned MLSs from liability for the types of claims brought in these cases on behalf of home sellers related to broker commissions.
- While the release excludes MLSs that are not wholly owned by REALTOR® associations, the agreement provides a mechanism for those MLSs to obtain releases efficiently if they choose to use it.
- This mechanism includes opting into the MLS practice changes that are a part of the agreement and paying a per-subscriber fee to the Settlement Fund.
- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. This change will go into effect in mid-July 2024.
- Additionally, we have agreed to require MLS participants working with buyers to enter into written representation agreements with their buyers. This change will also go into effect in mid-July 2024.

#### **9. How does the settlement affect home sellers and home buyers?**

- 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.
  - MLS participants acting for buyers would be required to enter into written agreements with their buyers before touring a home. These agreements can help consumers understand exactly what services and value will be provided, and for how much.

#### **10. How does the settlement affect corporate brokerages and any brokerages that are carved out from the release?**

- The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.
- While we would have preferred to protect all industry players, ultimately NAR could not persuade the plaintiffs to include the largest brokerages, particularly given the significant settlements that other corporate defendants have already reached.

#### **11. How will buyer brokers get paid now?**

- We have long believed that it is in the interests of the sellers, buyers, and their brokers to make offers of compensation — but using the MLS to communicate offers of compensation would no longer be an option.
- Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals.
- The types of compensation available for buyer brokers would continue to take multiple forms, depending on broker-consumer negotiations, 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 serve.

**12. Why does the release of liability carve out some co-defendants and some of their affiliated agents?**

- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- Despite NAR's efforts, agents affiliated with HomeServices of America and its related companies—the last corporate defendant still litigating the *Sitzer-Burnett* case—are not released under the settlement, nor are employees of the remaining corporate defendants named in the cases covered by this settlement.
- Plaintiffs would not agree to include these members and employees of the corporate defendants in the NAR's release
- NAR secured in the agreement a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion and MLSs not wholly owned by REALTOR® associations to obtain releases efficiently if they choose to use it.

**13. How will NAR fund the settlement?**

- One of the critical advantages of this agreement is that NAR would be able to pay the settlement amount over time.
- We will determine how to allocate funds as they become due, working closely with our Finance Committee.

**14. How does this settlement change NAR's value proposition? Why should real estate professionals continue to be NAR members after this news?**

- We are confident that this agreement provides a path for NAR to move forward and continue our work to preserve, protect, and advance the right to real property for all.
- NAR fought to include all members in the release and was able to ensure more than one million members were included.
- We will continue to deliver unparalleled value to, and advocacy on behalf of, REALTORS®, including through our learning opportunities and resources, research, and member tools.

**15. What is the value of an MLS?**

MLSs have always provided significant value beyond communicating offers of compensation.

- MLSs:
  - Enable comprehensive marketplaces: Access to inventory and widespread advertising incentivizes local broker participation.
  - Ensure reliable data access: NAR guidelines for local MLS broker marketplaces enable hubs of trusted, verified information where all participants have equitable access.
  - Create connections: Local MLS broker marketplaces create the largest opportunity for connections between real estate agents with properties to sell and those with clients looking to buy.
  - Advance small business: Compiling housing information that is accessible to all businesses, in one place, allows smaller real estate brokerages to compete with larger ones.
  - Encourage entrepreneurship: Because of lower barriers to entry enabled by local MLS broker marketplaces, new market entrants can advance technology, consumer service and other innovations.

**16. What should listing brokers advise their clients about the prohibition of offers of compensation on an MLS?**

- Listing brokers should inform their clients that offers of compensation would 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 (for example – concessions for buyer closing costs).
- Compensation would continue to be negotiable and should always be negotiated between agents and the consumers they serve.