

NAR's \$418M settlement throws a wrench at the MLS. So now what?

If the proposed settlement is approved, multiple listing services will be forced to nix the buyer commission field by July. Now is the time to prepare, writes author and trainer Bernice Ross

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On Friday, [the National Association of Realtors announced a \\$418 million settlement](#) in the commission lawsuits to be paid over four years. Part of the settlement removes the buyer commission field from multiple listing services. Here's what you need to know, as well as steps you can take to cope with this fast-moving tsunami of change.

First, it's important to note that this is a proposed settlement. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) will probably weigh in on this matter. Moreover, the settlement excludes HomeServices of America, their brokerages and agents. It also excludes another 94 large brokerages that had \$2 billion or more volume in 2022. Second, defendants in [Batton 1 and Batton 2 in Illinois](#), where the plaintiffs were buyers (not sellers) and that Inman called "the mother of all commission lawsuits," are also not included in this settlement.

Will association membership continue to be a requirement to access the MLS?

On the plus side for NAR, this is a major win since they will not be facing bankruptcy. They will also continue to retain control over a number of MLSs nationally. What's unclear is whether the DOJ or FTC will force MLSs to eliminate association membership as a requirement to access to MLS listings.

According to [RETechnology](#), 350,000 non-Realtors can already access the MLS systems without being Realtors. "Many states, including California and Florida, have mandated that MLS providers extend their offerings to non-Realtors for a long time. Whether you're already on board or contemplating this transition, now is the opportune moment to position your organization ahead of the curve." The article also calls on associations and MLSs to provide a "non-Realtor" option with a fee for accessing the MLS.

The buyer compensation field disappears in July 2024

Assuming this settlement is approved, the impacted MLSs will be forced to remove the buyer commission field by July 2024. Now is the time to start transitioning any future listings to this new model.

Based on anecdotal information I've heard from companies and those working with large teams, about 60 percent of the time sellers are already asking agents on listing appointments about how they should handle the [buyer's commission](#). Chances are that almost all sellers will be asking about this ruling given how much press this settlement has received.

For the time being, look to your broker, your company's legal counsel or your state association hotline for advice on how to handle these inquiries. If you're going to continue to represent buyers, it's time to start using buyer brokerage agreements if you don't already, as these will soon be required for all buyer transactions.

Ignore the naysayers who claim prices will come down significantly

According to [The New York Times](#), "Housing experts expect the deal to shake up the housing market and even drive down home prices across the board."

These so-called "experts" seem to have forgotten that prices are driven by market forces, not the amount of commission, as Steve Murray correctly noted in an article on [CBS News](#).

"It will have the impact of reducing commission costs for sellers; it will save money for sellers to the detriment of buyers," Murray said, adding, "Sellers don't set home prices based on what their closing costs will be — the market sets home prices."

The number of Realtors will drop dramatically

At last summer's Inman Connect Las Vegas, I spoke with quite a few industry leaders at brokerages, state associations and MLSs. At that time, most were planning for 20 percent to 40 percent [declines in their membership](#) if the MLSs were forced to eliminate the buyer compensation field from the MLS. The good news for Realtor associations is that most Realtors paid their annual MLS/association dues in January. Consequently, the big hit in revenue and membership won't really show up until at least 2025.

Nevertheless, according to the latest [Inman Intel report](#), 27 percent of agents are considering joining the American Real Estate Association rather than remaining in NAR. Whether the new trade group is actually a viable option remains to be seen.

Is decoupling the buyer's commission the demise of the MLS?

In an [interview](#) with Next Home CEO James Dwiggins last fall, he warned that even if the parties reach a final settlement, the DOJ and the FTC are likely to become involved.

"What's super important for everybody to hear is that regardless of how these civil cases play out, you are very likely going to see the Department of Justice and the Federal Trade Commission get involved and find a way to remove compensation being offered in the MLS," Dwiggins said.

Nevertheless, he explains why, even if buyer commissions were decoupled, this would not reduce the importance of the MLS.

"The MLS is extraordinarily important. Cooperation is extraordinarily important. The way that data is warehoused, the way that data is secured, all of those things are intact. The difference is an offer of compensation is no longer in the MLS," Dwiggins said.

"Do I think MLSs will consolidate? Yes. Do I think associations will consolidate? Yes, candidly, they should. There should be fewer of them to begin with anyway, but I do think the importance of those two organizations are still intact — they will just act differently."

Americans are willing to pay a full commission, provided that they see the value

Dwiggins pointed to research done by 1000 Watt that shows Americans are willing to pay a full commission when they see the value of doing so. He went on to explain why this is the case:

"In 1960, 30 percent of Americans had dual-income households. Today, between 60 percent to 70 percent of Americans have a dual-income household. Because everybody is busy with their careers, kids and other activities, they want convenience. They're not going to wake up one day and say 'we need to sell our house' and do it themselves," Dwiggins said.

"Studies by 1000Watt have also shown that consumers don't disagree with what agents are getting paid — we just have to learn how to articulate it more clearly."

Consequently, it's incredibly important that every buyer's agent can articulate the value they bring to the transaction. NAR published a very useful document that outlines [179 Ways](#) Realtors are worth every penny of their compensation. Print up this list and share it with both your sellers and buyers on your next listing or buyer interview appointment.

NAR should work with Freddie Mac and Fannie Mae to roll closing costs and commissions into the loan amount

One of NAR's core strengths is [lobbying](#). It would benefit Realtors everywhere if buyer's agent commissions could be rolled into their closing costs.

FHA, VA and USDA loans already have provisions that allow borrowers to roll certain closing costs into their loan under certain conditions. These models could be extended to Freddie Mac and Fannie Mae loans.

- [FHA loans permit](#) the inclusion of closing costs in the loan amount. Additionally, sellers can offer concessions of up to 6 percent of the loan amount to assist with financing needs.
- [VA loans](#) permit borrowers to include the VA funding fee in the loan amount. Other closing costs may not be financed into the loan, but the VA does allow for seller concessions and lender credits. These concessions

can be used to pay closing costs without increasing the loan balance. Closing costs on VA loans can range from 1 percent to 5 percent of the total loan amount. The funding fee varies based on several factors, including the borrower's type of military service and whether it's the borrower's first VA loan. VA loans also prohibit lenders from charging certain expenses, which can save the borrower even more money.

- [USDA loans](#) require that the property's appraised value does not exceed the maximum allowable sales price for the borrower if closing costs are being rolled into the loan. Sellers can contribute up to six percent of the loan amount through concessions to lower closing costs for the borrower.

Seller concession fields in the MLS take center stage

Did you notice that the FHA, VA and USDA loans all allow for seller concessions? As we move into this post-settlement environment, seller concessions will be an extremely important tool for putting deals together, especially issues regarding buyer-broker compensation.

Ed Zorn, VP and General Counsel of the California Regional MLS in his ICNY session [Anticipating MLS Evolution: The Pathway to Potential Settlements](#), made a strong case for how the MLSs and the industry should adapt to this new environment by using seller concessions.

Zorn recommends that MLSs create an open seller concessions field. Seller and buyer concessions are a pivotal part of the negotiation process in all transactions. For example, anyone who has ever purchased a home and asked the seller to do repairs, buy down the buyer's mortgage interest rate, or leave the big screen TV, etc. has negotiated a seller concession.

The open seller concession field will allow the seller to specify if they want to give the buyer a credit that could be used to pay the buyer's agent a commission, give the buyer a credit towards closing costs, replace the carpet, or any other concession or incentive the seller may want to provide. This is a viable approach that not only allows the sellers and buyers to determine which concessions they would like, but in my opinion, would also be welcomed by the DOJ.

Zorn also suggested that residential agents take a cue from the [commercial side](#) of the business. Buyer agents should include the amount of their commission as well as any concessions as a standard part of any offer they present.

Challenges ahead for state and local associations

In the same interview, Dwiggins laid out the challenges facing state and local associations as they go about decoupling [buyer commissions](#).

"Currently, 12 states require broker representation agreements that you must sign before you at least write an offer on a property that's in the MLS. The 38 other states need to implement the same thing. Local associations or statewide associations need to legislatively go down the path of getting this implemented at the state level," Dwiggins said.

"State associations need to get together now and go to work at the state level to get a buyer-broker representation agreement implemented as state law like the 12 other states across the U.S. currently do it today."

This will be especially difficult for the four states that have transaction brokers and for other states that tie the buyer's broker compensation to sub-agency.

Dwiggins did point out an important benefit for sellers: "They're not going to have a bunch of looky-loos come through their home who really aren't serious about buying the property."

Should the industry move to an hourly rate like attorneys or use a menu of services?

[Dwiggins explained](#) the main reason the real estate industry cannot move to an hourly rate model like attorneys use.

"I've had a lot of people ask me, do we become hourly? No. Here's why. First of all, our carve out in that specific statute where we are all 1099 [independent contractors], you can't charge hourly unless you want to employ everyone," Dwiggins said.

He also nixed the idea of going to a flat rate or menu of services. The reason? Most flat-rate companies have gone bankrupt. Three notable examples include Foxtons, [Purple Bricks](#) and [REX](#).

One step at a time

It's going to take time to [navigate](#) through the changes ahead. There's going to be chaos and confusion, but the bottom line is that the pent-up demand for real estate is still there and the market is already adjusting to having higher interest rates.

Moreover, today's transactions are so complex, most people have neither the time nor the ability to navigate today's real estate transactions on their own.

So, polish up your buyer value proposition (or create one from the [NAR 179 ways](#)) and be prepared to help your sellers understand how offering seller concessions can help them attract more buyers, which in turn, will result in a higher price.

Bernice Ross, president and CEO of [BrokerageUP](#) and [RealEstateCoach.com](#), is a national speaker, author and trainer with over 1,500 published articles. Learn about her new and experienced agent sales training programs at [BrokerageUP.com](#) plus her latest initiative to help women build wealth and secure their financial independence at [RealEstateWealthForWomen.com](#)