

The commission change mega-FAQ you need to start the historic week

Now that the 'New Normal' has officially begun, it's time to answer the frequently asked questions agents and brokerages have about the newly implemented commission settlement rule changes

by [Christy Murdock](#), Inman News August 19, 2024

After months of anticipation, we're finally living in our New Normal, where buyer's agent compensation is no longer offered via Realtor-affiliated multiple listing services, and all buyers need to sign some type of agreement before a buyer's agent takes them to tour a property.

We've known for a while that the rule changes of the proposed National Association of Realtors settlement would go into effect on Aug. 17, but with all of the questions, concerns and confusion surrounding the implementation of the new rules, agents and brokers are still looking for clarity.

We wanted to put together some of the [questions](#) we're still seeing, along with others we've encountered in conversations with agents and brokers all over the country. The goal is to create a compendium of the advice we're hearing and the answers you need, so you'll feel more confident and secure as you answer questions and change up your daily practices.

How did the system work before? How and why is it changing?

Previously, NAR-affiliated MLSs required some offer of buyer agent compensation when taking a listing, even if it was as little as \$1. While there was not a set "standard" commission rate, many areas had more or less consistent rates of commission, usually ranging from 2.5 percent to 3 percent on each side of the transaction, with the seller paying both sides of the commission.

In October 2023, the Sitzer | Burnett lawsuit in Missouri saw a jury award seller plaintiffs \$1,785,310,872 in damages, which, under the law, would be automatically tripled to \$5.356 billion. The jury agreed with the plaintiffs' assertion that NAR and various large franchisors conspired to keep commissions high via the trade group's cooperative compensation rule, also known as the Participation Rule, requiring listing brokers to make an offer of compensation to buyer brokers in order to submit a listing to a Realtor-affiliated MLS.

Just hours after the Halloween 2023 verdict in the Sitzer | Burnett lawsuit, a slew of [copycat lawsuits](#) began to be filed against the NAR, brokerages and real estate associations. These came from buyers and sellers in many different states and asserted that a conspiracy among industry

On Mar. 15, 2024, NAR agreed to a [settlement](#), which, among other things, promised to pay \$418 million over the next four years and promised to make major changes to the way agents conduct business.

According to the terms of the settlement, NAR would no longer create rules that allow listing agents to set compensation for buyer brokers, and offers of compensation would no longer be displayed on the MLS.

In addition, buyers would need a [signed agreement](#) with an agent in order to tour a property..

What does the Department of Justice have to do with all of this?

At the same time consumers were challenging NAR's policies, the [Department of Justice](#) was repeatedly questioning the way agents are compensated and how agent compensation was communicated.

The DOJ has previously indicated that it doesn't want to see offers of compensation from a listing broker made to a buyer broker anywhere. Those offers will be removed from multiple listing services as part of the NAR settlement agreement.

However, some in the industry are still looking for workarounds that would allow them to advertise offers of compensation, with new companies springing up to offer agents and consumers options for advertising commission offers.

In a recent update, NAR President Kevin Sears confirmed that "the DOJ continues to keep a close eye on perceived efforts to create 'loopholes' or '[workarounds](#)' to the intent of the settlement agreement" and "seems particularly focused on whether [buyer] agreements are tools for that."

Is this going to bring home prices down?

Probably not. Rising home prices over the past few years have come from a strange brew of pandemic-era demand, changing work-from-home policies, low interest rates, subsequent high(er) interest rates, the ensuing mortgage [lock-in effect](#), increased construction costs and climate-change-induced increases in homeowners insurance.

The resulting combination led to a lack of supply and increased costs for financing that significantly drove up home values in the majority of markets.

Compared to all of these economic factors, the cost of a buyer's agent will not necessarily make or break affordability, [except, perhaps, for those](#) who are already [struggling](#) to put together the down payment and closing costs involved in a home purchase.

Is this going to lower my commission?

According to a [recent report from Redfin](#), buyer's agent commissions have already begun falling in the days since the NAR settlement. In fact, even before the settlement, there were brokers and agents already looking for alternative [commission models](#) that brought buyer commissions below the industry average.

New consumer-focused guidance from watchdog Consumer Federation of America (CFA) encourages buyers and sellers to negotiate lower-cost services, including a fee-free showing contract and a [2 percent agent commission](#).

The truth is that we don't yet know where the industry and consumers will land when it comes to commissions. It will probably involve a combination of market conditions — wherein a more experienced agent becomes more valuable during times of intense competition — and an ongoing effort by agents to better [communicate the value](#) they bring to the buyer transaction.

Will buyers need to use a real estate agent?

Buyers have never been and still are not required to use a buyer's agent, but most have chosen to use an agent because they feel it is in their best interest to have someone negotiating on their

behalf and shepherding them through the transaction process. Those reasons will remain after the settlement changes.

If a buyer wants to use me as an agent, how much will that cost them out of pocket?

When they sign a representation agreement, you'll have the opportunity to negotiate your commission with your buyer client. There is no fixed percentage or dollar amount assigned to buyer agency.

While the buyer may end up paying your commission out of pocket, they may also be able to ask the seller of the home they buy to pay your commission or provide a compensatory concession at closing as part of the offer negotiation.

Will more buyers use dual agency or buy without an agent?

Due to some of the early consumer-facing [media coverage](#) about the NAR settlement, buyers may believe that they'll do better bypassing the buyer's agent and going directly to the listing agent.

According to broker [Cara Ameer](#), here's why that might not be in buyers' best interests:

"The listing agent works for the seller. [...] Buyers need to understand that the listing agent was hired by the seller and signed a listing agreement that authorizes the listing agent and their brokerage to put the property into the multiple listing service and market their property based on certain terms, conditions and a listing price that has been agreed to."

If more buyers do choose dual agency, it will be important for agents to make sure they're complying with best practices for serving their clients.

From a [compliance standpoint](#), compliance expert Summer Goralik writes, dual agency, or representing both the buyer and seller in a transaction, can impose a heavy burden on the agent caught between competing interests.

"The dual agent is bound by fiduciary duties to each party, necessitating equal loyalty, care, honesty (including full disclosure of material facts), fair treatment, and confidentiality to both the buyer and seller," Goralik writes.

Are sellers allowed to pay buyer agent commissions?

Yes, sellers are still allowed to pay the buyer's agent commission; however, they can no longer advertise that fact or the amount they're willing to pay in their MLS listing.

Many agents and brokers initially saw this as encouraging or even requiring a workaround — for example, posting compensation offers on a personal or brokerage website or communicating with buyer agents by phone or email. However, many are now discouraging any form of communication about the seller's willingness to pay.

As the listing agent, your fiduciary duty is to your seller. Just as you wouldn't, of your own volition, go to all of the buyer's agents in your market and say that your seller is ready and willing to take a huge cut in their asking price, many say you probably shouldn't go to everyone and say that the seller is willing to pay thousands of dollars in buyer's agent compensation.

As Goralik puts it, “As an agent representing a seller, you must follow your seller’s instructions and always put their interests first. Ultimately, you will discuss these options with your clients and proceed according to their wishes.”

What if the seller is willing to pay a smaller amount of agent compensation than I have agreed to with my buyer client?

There are a few ways that this could end up being handled:

- The buyer may choose to pay the buyer’s agent out of pocket.
- The buyer’s agent may choose to waive the balance of the commission.
- The buyer may ask for additional concessions to offset closing costs, leaving them with more money to put toward the buyer’s agent commission.
- The buyer may discuss with their lender whether they can increase the sale price to offset an additional concession from the seller, which could then be put toward the down payment, closing costs or buyer’s agent commission.

In the case of [VA loans](#), the U.S. Department of Veterans Affairs unveiled new rules just before Memorial Day that would temporarily allow veteran buyers to pay their buyer broker fee when buying a home under a government program intended to benefit them. Previously, VA buyers were banned from paying directly for broker compensation.

Should my listing clients offer to pay a buyer’s agent commission?

While much of the earliest mainstream reporting of the NAR settlement asserted that real estate would now be 3 percent cheaper, that has given way to a more clear-eyed assessment of the realities of real estate transactions.

On the pro side, sellers may feel that offering a buyer’s agent commission is part of the cost of doing business and getting their transaction to the closing table. In a time of unprecedented challenges to affordability, expecting buyers to come up with additional thousands out of pocket to pay their buyer agent directly may prove to be an insurmountable obstacle for many.

On the con side, sellers in a [high-demand, low-inventory](#) market may feel that they can afford to hold out for a buyer who can and will pay the buyer’s agent out of pocket. After all, during the pandemic-era buying frenzy we saw buyers who were willing to offer tens of thousands of dollars above asking price or in additional incentives to get their offer accepted.

What happens if my client and I agree to a lower commission and the seller is willing to pay more?

According to the [terms of the NAR agreement](#), which is scheduled to be finalized in November with terms going into effect on Aug. 17, “a Realtor or Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.” If the seller is willing to pay more, the difference can be rebated to the buyer or become part of the overall purchase negotiation.

What happens if the buyer for my listing doesn’t have an agent?

While many industry experts believe dual agency, where allowed, may become more common after Aug. 17, [listing agents](#) may end up picking up the slack as “unofficial” dual agents, maintaining the flow of documents and deadlines without officially taking on the role of fiduciary to buyers.

This leaves essentially unrepresented buyers having to do their own due diligence, including determining fair market value for a property, finding an inspector, and juggling the requirements of mortgage approval and closing.

What do I do if a buyer agent calls me asking how much my seller is willing to contribute toward their commission?

There are different approaches to how such a request can be handled. NAR has advised its members to make such calls and continues to promote cooperative compensation from sellers or listing brokers to buyer brokers.

On the other hand, [according to](#) NextHome CEO James Dwiggins, “There is zero reason sellers/seller agents should advertise buyer’s agent compensation, concessions, or anything in advance of an offer. The only thing agents should state and put in the MLS (which is legal) is the following: ‘Seller is willing to entertain any and all requests you put in your offer.’ The end.”

What do I do if I think an agent is breaking the new rules?

The process for reporting agent misconduct is already [well established](#). You may choose to speak to the agent, their broker, or the MLS in charge of enforcing the new rules.