



# NAR Class Action Settlement

## What it means for LIBOR Members



Information current as of April 2, 2024.

# Cooperative Compensation Litigation

- NAR and four corporate brokerage defendants were sued in lawsuits Missouri (Burnett Case) and Illinois (Moehrl Case).
- Cases allege commission rates are too high, buyer brokers are paid too much, and NAR's rules and policies along with the corporate defendants' practices are the cause.
- Plaintiffs claimed rules requiring listing brokers to identify offers of cooperative compensation leads to artificially inflated commissions and damage to home sellers.
- NAR and the defendants adamantly disagreed, and asserted that NAR's rules are intentionally pro-consumer and pro-competition.





# What Happened in the Cases?

- Sitzer/Burnett case covered Missouri area markets and went to trial first.
- On October 31, 2023, after 11-day trial, the jury found defendants liable and awarded \$1.78 billion in damages (\$5.34 billion in treble damages).
- Moehrl case still pending and awaiting trial.
- Many copycat lawsuits filed since -- over 20 plus cases.





# The Settlement

- On March 15, 2024 NAR announced it reached a proposed settlement with the plaintiffs.
- The settlement is subject to court approval.
- The agreement would resolve claims against NAR, over 1 million NAR members, all state and local REALTOR® associations, all association-owned MLSs, and all brokerages with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or less.





# Who is Covered by the Settlement?

If you are an NAR member, you are covered by the settlement unless:

- You are an employee of: At World Properties, LLC; Compass, Inc.; Douglas Elliman, Inc.; Douglas Elliman Realty, LLC; eXp Realty, LLC; eXp World Holdings, Inc.; Hanna Holdings, Inc.; HomeSmart International, LLC; Howard Hanna Real Estate Services; Keller Williams Realty, Inc.; Real Broker, LLC; The Real Brokerage, Inc.; Realogy Holdings Corp.; Realty ONE Group, Inc.; Redfin Corporation; RE/MAX, LLC; United Real Estate; or Weichert, Realtors® OR
- You are associated with HomeServices of America or one of its affiliates



# The Financial Terms of Settlement

- Settlement payment: NAR would pay \$418 million over approximately four years.
- NAR will not change membership dues for 2024 or 2025 because of this payment.



# New Rules Required by the Settlement

- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
- There will be a new rule requiring written buyer representation agreements for MLS participants and REALTORS® working with buyers.
- These rules will go into effect in mid-July 2024.



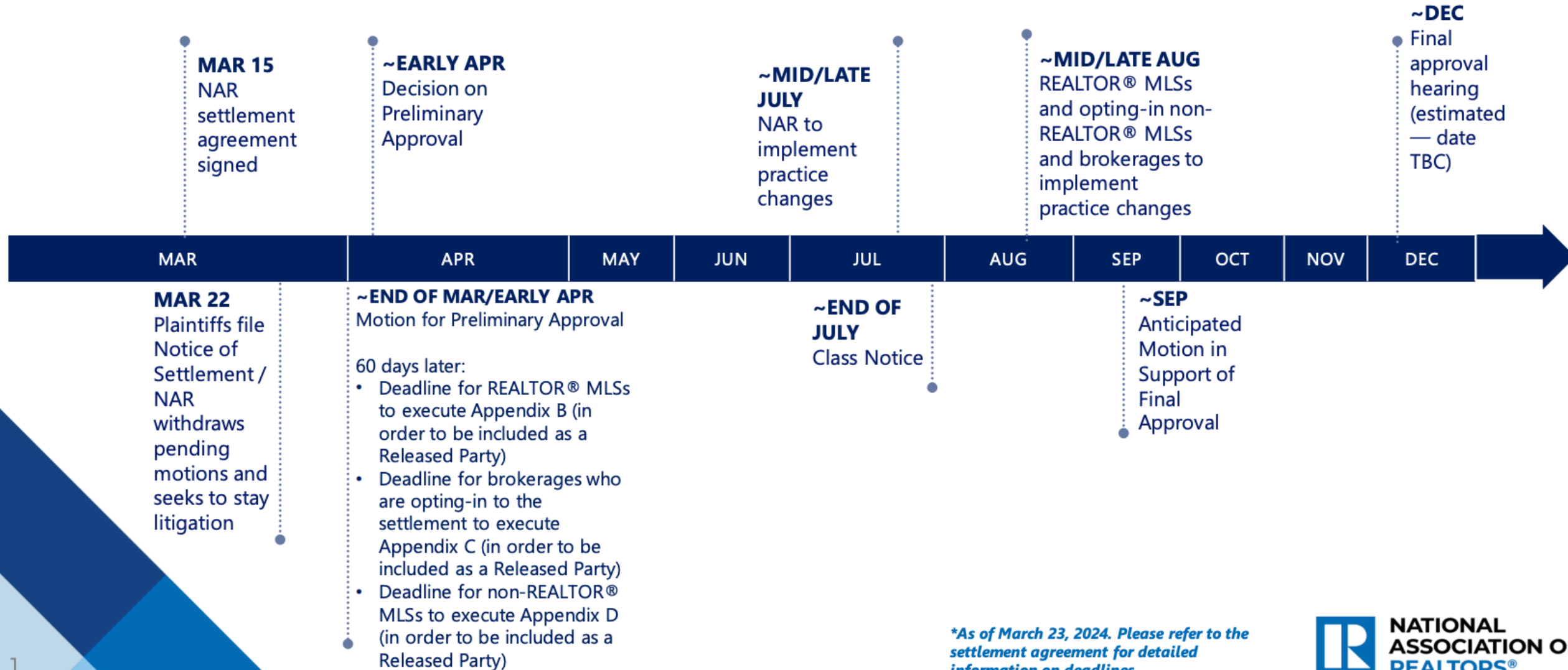
# What is the Timing of the Settlement?



- The process of court review is expected to take several months or more.
- NAR believes there are strong grounds for the court to approve this settlement because it is in the best interests of all parties and class members.
- NAR has agreed to put new rules into effect by mid-July 2024.
- MLS's must adhere to rules within 150 days after motion for preliminary settlement approval.



# Estimated timeline of key upcoming milestones\*



*\*As of March 23, 2024. Please refer to the settlement agreement for detailed information on deadlines.*



# Offers of Compensation Prohibited on 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).
- Participants will be permitted to promote offers of compensation for their own listings on their own websites.



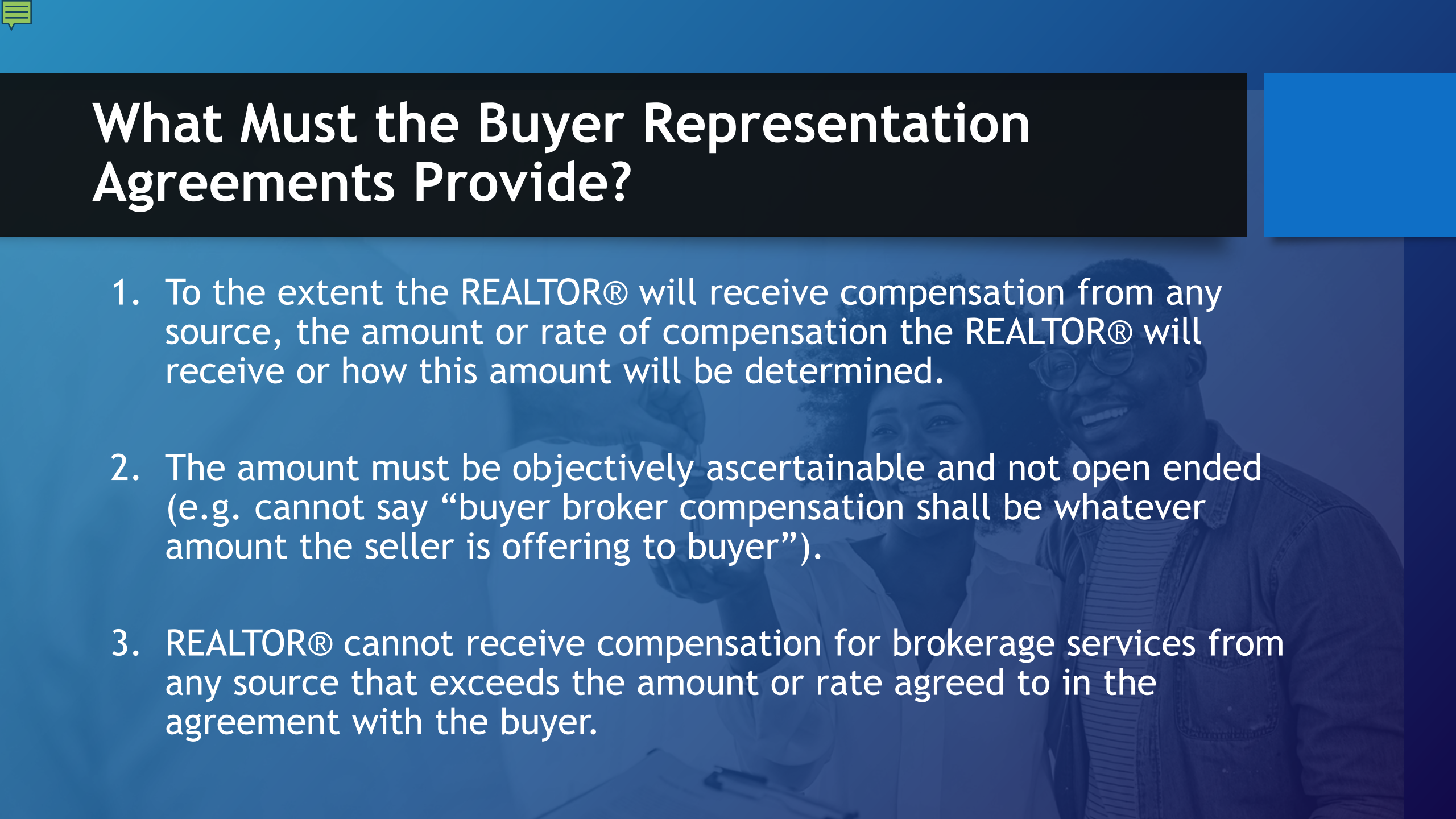
# Mandatory Buyer Representation Agreements

- LIBOR and NAR have been advocating for the use of written agreements for years.
- In this settlement, NAR has agreed to require MLS participants and REALTOR® working with buyers to enter into written representation agreements with their buyers before the buyer tours any home.





# What Must the Buyer Representation Agreements Provide?

1. To the extent the REALTOR® will receive compensation from any source, the amount or rate of compensation the REALTOR® will receive or how this amount will be determined.
  2. The amount must be objectively ascertainable and not open ended (e.g. cannot say “buyer broker compensation shall be whatever amount the seller is offering to buyer”).
  3. REALTOR® cannot receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.
- 



# What Should You Do Now in Response to the Settlement?

- No practice changes are required yet.
- ALWAYS let clients know the value of working with a REALTOR®, how commissions are market-driven and negotiable.
- ALWAYS discuss compensation scenarios and arrangements in detail with your sellers and buyers.
- Start using buyer representation agreements and clearly advise your clients about the terms of the transaction.





# How to Show Your Value

179 Ways Agents Who Are REALTORS® Are Worth Every Penny of Their Compensation

105 More Ways Agents Who Are REALTORS® Are Worth Every Penny of Their Compensation

**105  
MORE WAYS**

**AGENTS WHO ARE REALTORS®  
ARE WORTH EVERY PENNY OF  
THEIR COMPENSATION.**

Here's a look at all the things – big and small –  
that a REALTOR® may do to help clients when  
buying a home.

**179 WAYS**

**AGENTS WHO ARE REALTORS®  
ARE WORTH EVERY PENNY OF  
THEIR COMPENSATION.**

Here's a look at all the things – big and small  
– that an agent who is a REALTOR® may do to  
help clients when buying and selling a home.

You know you earn every penny you get when  
you sell a home. This list can help you show  
customers exactly what you do to help  
them buy their home.





## Explain That Commissions Are Always Negotiable

The seller decides what fee they are willing to pay for their broker's services and how much that listing broker should offer a broker who brings a buyer to close the transaction.



# Explain Cooperative Compensation

When you explain to sellers that commissions are negotiable, explain the cooperative compensation remains a choice and it can:

- Be used to attract buyers, which ultimately increases the number of offers a seller receives, potentially resulting in a higher sales price.
- Incentivize buyers to make offers because offering compensation can help reduce the buyer's potential closing costs.





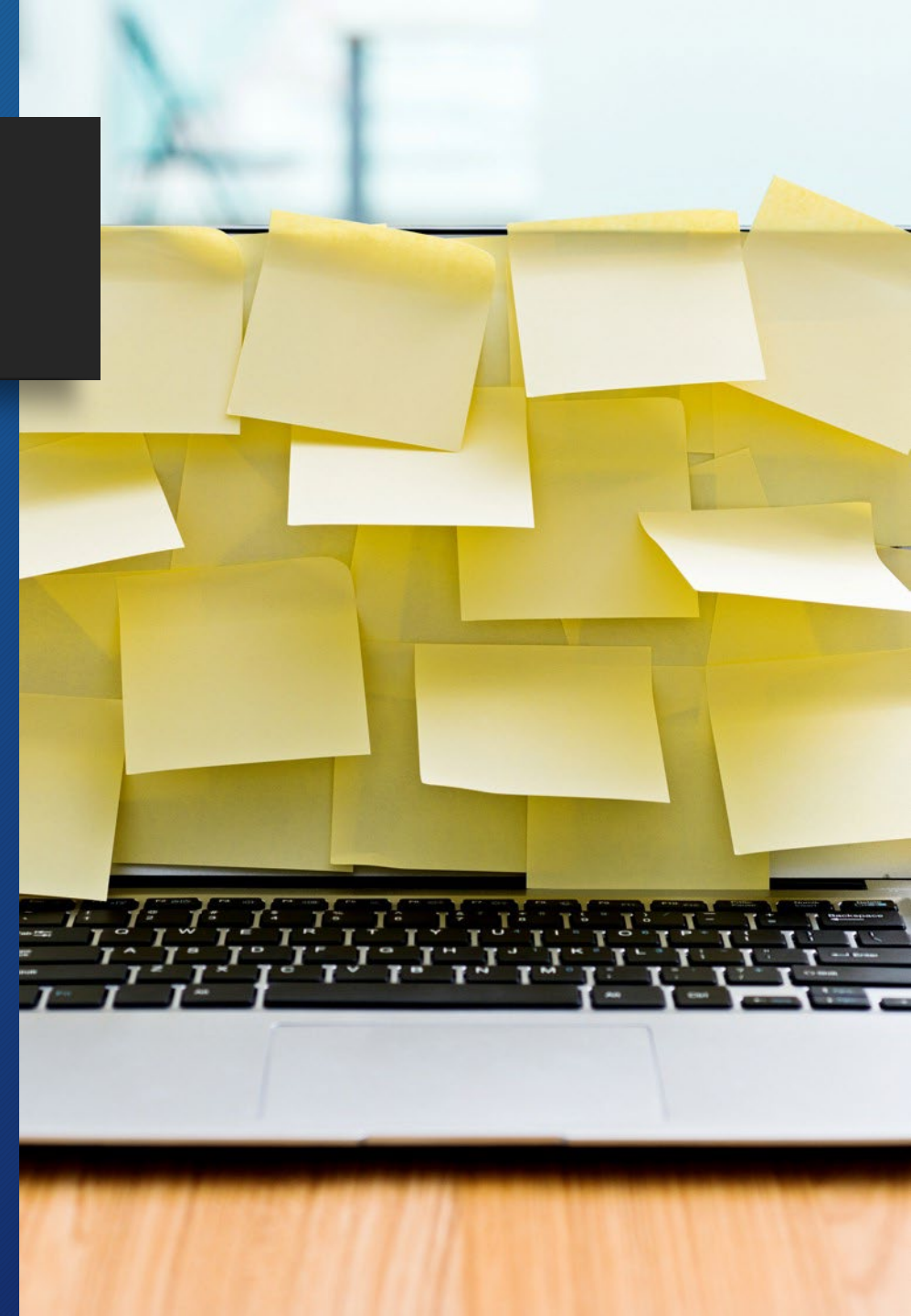
# Stay Informed & Rely on Trusted Resources

- Some outlets have falsely suggested that NAR previously set or guided commissions to a standard rate of 6%.
- Neither LIBOR nor NAR set commissions, and commissions were negotiable long before this settlement.
- You need to pay attention. Final rules will be release and forms will be updated.



# Where Should You Go For Information?

- NAR is providing settlement resources and updates at [competition.realtor](https://www.competition.realtor) and [facts.realtor](https://www.facts.realtor)
- LIBOR has set up an [NAR Litigation update webpage](#) with resources and an FAQ regarding the settlement.
- LIBOR has created brand new [Buyer Representation Resources Page](#) with information to help you articulate the value and consumer benefits of buyer agency.





# Take the ABR® Course for Free!

- NAR is offering the popular Accredited Buyer's Representative (ABR®) designation course, which is typically \$295, available to Realtors® at no cost for the remainder of 2024.
- Valuable real estate education that elevates your skills and knowledge in the eyes of home buyers.
- Access to special forms and publications.

Sign Up For ABR  
With LIBOR





# Your Questions About the Settlement







**Question: Can you explain the amount of the settlement that NAR agreed to pay? How much did NAR believe the exposure would be and how was that amount calculated?**

**Answer: Under the terms of the agreement, NAR would pay \$418 million over approximately four years.**

NAR advised that they considered a range of legal options throughout the litigation process, including settling or continuing to appeal the Sitzer-Burnett verdict (which was over \$5 billion) and assist in litigating the related copycat cases. The latter could have forced the association to file for Chapter 11 bankruptcy protection, leaving members, associations, MLSs and brokerages exposed.





**Question: Where did the assumption come that there is a standard commission?**

**Answer: False reports by the mainstream media. NAR does not set commissions, which are and have always been negotiable.**

**The rule that was the subject of litigation requires only that listing brokers communicate an offer of compensation, which can be any amount, including zero.**

**NAR and MLS rules expressly prohibit MLSs, associations, and brokers from setting or suggesting any such amount that should be included as compensation.**





**Question: Does the settlement change Clear Cooperation Policy?**

**Answer: The proposed settlement does not address the Clear Cooperation Policy.**



Question: Once the new rules are in place, what should listing brokers advise their clients about the prohibition of offers of compensation on an MLS?

Answer: Listing brokers should inform their clients that offers of compensation will no longer be an option on an MLS. This does not prevent offers of cooperative compensation off the MLS or prevent sellers from offering buyer concessions on an MLS (for example - concessions for buyer closing costs). Compensation continues to be negotiable and should always be negotiated between agents and the consumers they serve.



Question: Will a listing broker need to obtain a seller's approval to offer cooperative compensation? If so, how will that need to be done?

Answer: Yes. The proposed settlement provides that REALTORS® and participants acting for sellers must conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that the listing broker or seller will make to another broker, agent or other representative (e.g. real estate attorney) acting for buyers; and

Such disclosure must be in writing, provided in advance of any payment or agreement to pay another broker acting for buyers, and specify the amount or rate of any such payment.

Question: Does this prohibition affect the compensation amount paid to the listing broker?

Answer: No. Compensation will continue to be negotiable and should always be negotiated between agents and the consumers they represent.





Question: Once the new rules are in place, how will it affect existing listing agreements that authorized an offer of compensation to be made in the MLS?

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.

Question: Once the MLS removes the compensation field, can I choose to publish my seller's cooperative compensation offer in the agent remarks?

Answer: No. The new rule would prohibit offers of compensation on the MLS, including in both the public and agent's remarks.



Question: Where will listing brokers be able to publish offers of compensation?

Answer: Listing brokers will be able to display (off-MLS) offers of compensation on listings from their own brokerage to buyer brokers or other buyer representatives, including on their own websites.



Question: Doesn't moving offers of compensation off-MLS introduce friction into the homebuying process? What happens if a buyer broker can't get timely information from a listing broker about offers of compensation?

Answer: The settlement does not change the ethical duties that NAR members owe their clients, which includes cooperation and conveying truth and timely information.

REALTORS® must always protect and promote the interests of their clients and treat all parties in a transaction honestly (Article 1, COE).



Question: Will there be a document or agreement that members can use to document an offer and/or agreement for compensation to be paid to a buyer's agent?



Answer: Buyer's agents should document requests for compensation made with their client's consent.

Most likely model forms and/or language will be developed for members to use to document the terms of an agreement to pay cooperative compensation.



Question: When can you ask the listing agent how much compensation they may be offering?

Answer: At any point. And you should convey that information to your buyer client.





Question: Will we still be allowed to offer compensation to seller's or broker's agents on the MLS?

Answer: No. The settlement agreement requires the elimination of all broker compensation fields on the MLS and prohibits MLS Participants, subscribers, real estate brokers, agents and sellers from making offers of compensation on the MLS to any cooperating brokers.

Offers of compensation off the MLS are always negotiable.

Question: Will there still be arbitration for compensation issues?

Answer: Commission disputes among participants can continue to be resolved through arbitration as part of the REALTOR® Code of Ethics and MLS policy.





Question: Does the settlement mean buyer brokers may have to work for free?

Answer: No. It just means using the MLS to communicate offers of compensation will no longer be an option. Compensation continue to be negotiable and should always be negotiated between agents and the consumers they represent.

The types of compensation available for buyer brokers will continue to take multiple forms, including but not limited to:


- Fixed-fee commission paid directly by the buyer
- Concession from the seller
- Portion of the listing broker's compensation

Question: Can a buyer request the listing broker to pay compensation to the buyer broker?

Answer: Yes. Compensation is always negotiable.







Question: Will the buyer representation agreement rule require the use of an exclusive buyer representation agreement?

Answer: We don't have NAR's final rule, but the settlement agreement does not state that a buyer representation agreement must be exclusive, and it's generally recognized that buyer representation agreements can be exclusive, non-exclusive or based on a per-property arrangement.

Question: What happens if the buyer wants you to represent them, but they refuse to sign the buyer representation agreement?



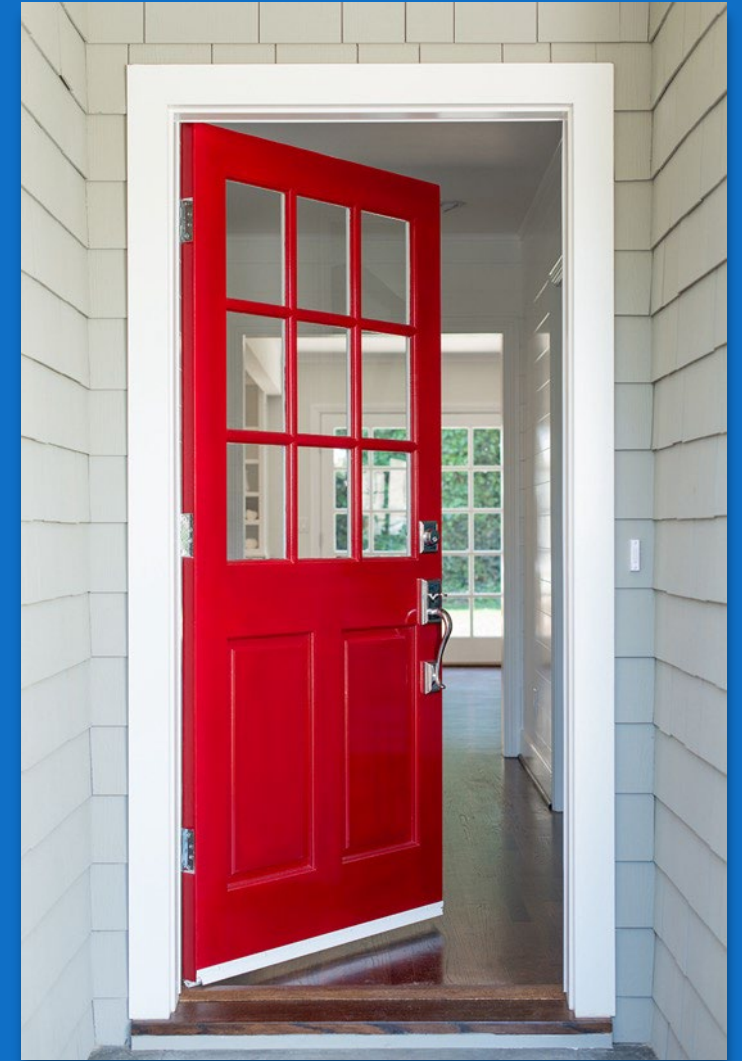
Answer: Under the settlement terms, you would not be able to represent a buyer to tour a home or be compensated for broker services by a buyer unless you have them sign a buyer representation agreement that provides an objectively ascertainable amount of compensation.



Question: Can you please address the handling of Open Houses with the new buyer representation agreement requirements?

Answer: As a listing agent at an Open House, you are representing the seller.

You can show a prospective unrepresented buyer your listing without a buyer representation agreement provided you are not also representing the buyer or being compensated for brokerage services by the buyer.





Question: Are you forced to represent a buyer if they come to an Open House to see your listing?

Answer: No. Buyers are the ones who decide whether they want buyer broker representation. Buyers can decide to be unrepresented.





Question: Can the listing broker ask a buyer's agent to see their buyer representation agreement and disclose what commission they have agreed to with buyer (especially if they are asking the seller for compensation)?

Answer: There are no regulations mandating that a buyer's agent must furnish a copy of the buyer broker agreement to the listing agent or disclose the total compensation agreed upon between the buyer and the buyer broker.

Question: Can an agent still be a broker's agent?

Answer: The settlement does not alter agency law in New York. A licensee can still act as a broker's agent.

Although compensation offers cannot be extended to any cooperating broker through the MLS, including broker's agents, these compensation offers can be made outside of the MLS platform.







**Thank You**

**For Ongoing Updates Visit  
[LIRealtor.com/litigationupdate](http://LIRealtor.com/litigationupdate)**

