

The way you buy property may be changing

In 2019 a group of home sellers filed a class action lawsuit against the National Association of REALTORS® (NAR). That group of home sellers claimed that REALTORS® violated anti-trust laws by charging a commission to the seller to sell their property and then share a portion of that commission with buyer's brokers to compensate them for bringing a buyer to purchase the property. This practice of offering "cooperating broker compensation" has been in place roughly for the past 44 years, since 1990, or the early 1990's.

On October 31, 2023 the NAR lost that lawsuit and as a result the plaintiff won a judgement in the amount of \$1.8 billion dollars, which, if the defendant appealed the court's decision and lost, the amount would be tripled to somewhere in the area of \$5.4 billion dollars.

On March 15, 2024, NAR proposed a settlement which apparently has been accepted by the class action folks that brought the lawsuit, but not yet approved by the court. There could still be changes required by the Department of Justice (DOJ), or the court could approve the proposed settlement and anyone buying or selling property and REALTORS® could move on with business. This has yet to be determined.

Here's what we know so far

From the proposed settlement:

- Buyer's can pay their own Broker for services rendered when purchasing property, just like a buyer would when seeking the services of any other professional. Essentially a fixed-fee commission paid directly by consumers.
- Seller's could still compensate Buyer's Brokers for services that they provide to the Buyer, but, that amount of compensation cannot be listed in the Multiple Listing Service (MLS), where that offer of compensation resides.
- Concession from the Seller to the Buyer (for example closing cost credit), but that credit could not be tied to paying for Broker's commission (as we presently understand it).
- Buyer Agency Agreements **MUST be executed** between the buyer and the real estate agent **BEFORE** seeing any property. This change is a requirement as a result of the proposed settlement agreement.
- **These changes are expected to take place around August 17, 2024.** The exact date has yet to be determined.

What's next

This is a result of likely forthcoming changes...Don't be shocked when, the next time you reach out to a REALTOR® wanting to tour a property the Agent asks you to sign a Buyer Agency agreement. This is a result of the forthcoming changes. This secures the fiduciary duties that the agent and brokerage firm owe you, and also secures how the REALTOR® and his or her firm will be compensated. Remember, no one wants to work for free. What this does:

- Preserves your choice that you have regarding real estate services and compensation. You can engage a professional to assist you in purchase of your new property, or you can procure and negotiate the purchase on your own.
- Compensation amounts that REALTORS® are always, and have always been negotiable. There has never, ever been a "standard commission rate" as that would indicate price fixing and be in violation of anti-trust laws.

As more information becomes available your REALTOR® will communicate the changes to you so that you are always fully informed of what's happening with regard to your specific situation and the industry as a whole.

