

# NAR Settlement FAQs: General

**1. Is the buyer agent going away?**

No. NAR's settlement absolutely assumes that there will still be buyer agents.

**2. Is Canada, or any other worldwide market, involved in the NAR Settlement?**

NAR is an American association. NAR's settlement does not currently address any MLS rules in Canada or any other worldwide markets.

**3. Do the same rules apply for commercial real estate?**

If you are using a NAR MLS or are a member of NAR, then yes.

**4. If we aren't NAR members, can we join a non-REALTOR® MLS and not have to follow these rules?**

Non-REALTOR®-owned independent MLSs are not automatically released from liability under the settlement, but they do have a mechanism to opt into the settlement protections. The non-REALTOR®-owned MLSs that opt in would be required to adopt the same rules.

**5. Why be a member of NAR?**

In some form or fashion, NAR has been in existence since 1913. There have been times when they have been an incredible association to the benefit of their members. We believe that NAR is going to have to present its case to each and every agent, and every agent will need to decide for themselves if membership is of value to them. Let's be clear, Keller Williams does not require you to be a NAR agent.

**6. If NAR just shot its primary value of the MLS in the foot, is it time to revisit the possibility of a National MLS?**

It's way too soon to start asking this question. Going forward, NAR will certainly need to clearly articulate its value to agents and the industry.

**7. Will KWRI be providing appropriate buyer representation agreements?**

Buyer representation agreements are created at a state and/or local level, or approved by your broker of record. We will be providing guidance as to what should be addressed in these agreements to help you make sure they are complete.

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**8. Will there be a uniform/official buyer representation agreement to be used for all buyer agents going forward?**

As of right now, buyer representation agreements are still created at the state and/or local level.

**9. How will this affect our ability to double-side a deal?**

The mechanics of if and how this would work will be determined by your state, your local board, and/or by your broker. Your pay will be addressed in your listing agreement.

**10. Can we disclose on the MLS in Remarks that there is no buyer agent commission being offered by the seller?**

NAR's settlement prohibits disclosing offers of cooperative compensation, broker compensation, or total broker compensation. It doesn't directly address a remark saying there is no buyer agent compensation being offered, but it seems like it would be fine. Different MLSs may have different views on whether this is permissible.

**11. Can we upload all of our listings onto kw.com and offer co-broker compensation on that site?**

We will need to see how MLSs adopt the rule changes. The way an MLS adopts the rule changes could prevent kw.com from displaying offers of cooperative compensation from KW agents, along with data feeds from the MLS.

**12. Who is going to enforce this locally? If someone doesn't get a buyer representation agreement signed before doing a showing, is it going to be a self-reporting system to our local board?**

We expect local brokers, boards, and MLSs to decide how they will train, inspect, and enforce these rules.

**13. Do you think the changes to the buyer representation agreement are going to impact our teams' structures?**

Team structures, like any other business arrangement, are created around income for value provided and the cost to provide that value. Each team owner has to determine the profit that they seek and the profit margin they will accept. As in any business, if there is a change to income opportunities, there most likely will have to be a corresponding change in expenses.

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## 14. Based on the changes of how buyer agents will be paid, would you advise agents to incorporate as a precautionary measure?

Consult your CPA for what's best for your business, but we believe that every agent should incorporate as soon as they can.

## 15. Are there any concerns about VA and FHA loans?

Yes. As many of you know, certain loan products such as VA and FHA loans do not allow buyers to use concessions for certain HUD items. The mortgage industry was as surprised by these rule changes as we were. We are told they are actively working on solutions.

## 16. What skills can we be working on building to ensure we can make the most of these changes?

- *First*, know your value.
- *Second*, learn how to present your value.
- *Third*, lean into the new rules around buyer representation agreements as a way of having a successful conversation about your value.
- *Fourth*, go find sellers. The old adage “you list to last” has always been true and still is. Sellers are the inventory that creates the market.

## 17. Do you think agents are more worried than they should be?

Yes. Those agents who understand and can convey their value should not be concerned. Know your value, present your value, and you will be just fine.

These changes are all about transparency. They are happening to make sure buyers are in full control of what buyer agents are being paid and that sellers are in full control over what they're paying. Worrying does not serve anyone. Agents have been protecting home buyers and sellers for more than 100 years and during that time, many rules have changed. We will adapt, we will evolve, and we will THRIVE.

## 18. I just saw on Good Morning America that agents are taking a pay cut ...

The media has gotten this wrong. The settlement isn't about what we charge, it's about transparency around the seller understanding that cooperative compensation is not required and that it is negotiable, and if offered, is coming from the seller, not the broker. And transparency for the buyer that buyer agent commissions are negotiable and the buyer is responsible for paying it.

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# NAR Settlement FAQs: Cooperative Compensation/Getting Paid

## 1. Is cooperative compensation now illegal?

No. Cooperative compensation is still legal. There is simply a new NAR rule that applies to all NAR members and NAR MLSs that does not allow cooperative compensation to be offered on the MLS.

## 2. Can I still be paid by the seller?

The seller can still offer cooperative compensation to the buyer agent as long as it is not listed on the MLS.

## 3. Can we still say “commissions”?

Yes! You simply cannot market or offer them on the MLS.

## 4. Is “commission” now referred to as “seller concessions”?

No. Seller concessions involve money that is being given by the seller directly to the buyer. The buyer can use those funds for anything they like, including paying their agent if they choose. A commission is money paid directly from the seller or listing broker to a buyer agent’s broker upon a completed closing.

## 5. Will buyer agents be forced to work for free?

No. No one can force you to work for free.

## 6. What’s going to happen to agent bonuses?

An agent will be able to be paid only what is agreed to in their buyer representation agreement for their brokerage services. That amount or percentage must be mutually agreed upon before signing.

## 7. Will there be no standard for buyer agent commission at all?

There never was. Commissions have always been completely negotiable.

## 8. If we will only be allowed to receive the commission amount set forth in our buyer representation agreement and we learn that the commission amount for a house the buyer wants to see is higher, can we amend our buyer representation agreement to that higher amount?

We are not sure how this will work out in practice, but the NAR settlement does not prohibit buyer agents from entering an amended buyer representation agreement that either decreases or increases the amount of compensation.

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# NAR Settlement FAQs: Cooperative Compensation/Getting Paid

**9. If a buyer says they can't afford to pay me, what do I do?**

You would include your compensation as agreed upon in your buyer representation agreement in the offer and negotiate it with the seller.

**10. Can I still include cooperative compensation terms on a purchase agreement contract?**

Yes.

**11. If proposed settlements are accepted and MLS fields for cooperative compensation are removed, what's the point of MLS?**

Please be careful with this sort of thinking. The MLS is one of the most effective marketplaces ever created. It provides unmatched visibility for home buyers, unmatched exposure for home sellers, and unmatched data (sold, property, and statistics) and communication ability for agents.

**12. If the seller does not offer cooperative compensation, can the buyer offer 2% MORE on the agreed upon price and have the seller credit the buyer said overage in order to pay the buyer agent's commission?**

Yes.

**13. If the seller offers a concession on the MLS and cooperative compensation off the MLS, how can I be sure my seller isn't at risk of paying both?**

The seller can always reject any offer. The wording of the off-MLS offer of compensation can also be worded to avoid this possibility.

**14. My seller wants to offer cooperative compensation. Can I still market it?**

Yes. You can use any marketing channel that you want other than the MLS. This includes emails, newsletters, postcards, radio, tv, billboards, the phone, calls and texts that are TCPA-compliant, carrier pigeon, a raven, tin cans with a string, and of course, social media. Please be aware that Zillow owns ShowingTime and could decide not to let agents post offers of cooperative compensation on that platform, whether for liability concerns or other business reasons. Moreover, MLSs could interpret the settlement to prohibit Zillow from posting offers from multiple brokerages on ShowingTime because it is using MLS data directly or indirectly and therefore terminate its data feeds.

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- 15. Can we receive a commission paid from both the buyer and the seller for the same transaction? For example, 1.5% from the seller and 1% from the buyer? If so, how does this get accounted for? One commission statement, or two separate statements – one for each party?**

Whether it's the seller's or the buyer's agent, their compensation will be determined by their respective agreements. Everything else will be determined by state and/or local laws and your local broker's policies regarding how commissions are paid.

- If a buyer agent can only accept compensation as stated in the buyer representation agreement and a seller is offering more than what is in the agreement, what wording or stipulations can be added to the agreement to allow the buyer agent to receive the higher amount being offered by the seller?**

None that we know of. An agent will be able to be paid only what is agreed to in their buyer representation agreement for their brokerage services. That amount or percentage must be mutually agreed upon before signing. The agreement cannot leave it open-ended and say that the amount will be whatever amount the seller is offering to the buyer.

- 16. Can we, as agents, now accept flat fees or retainer fees, as well as commissions?**

You always could. These are decisions made at the Market Center and individual agent level, based on what you and your customer believe your value is.

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# NAR Settlement FAQs: Showing Properties

## 1. How do open houses work as a listing agent holding it open?

Not much changes here. Listing agents will continue to hold open houses on their listings, and upon greeting/showing the property will do so as a seller's agent. If one of the people they showed the home wishes to write an offer, they may do so in accordance with state and local laws, which may include as a seller's sub-agent or a dual agent. If the buyer wishes to see other homes, they will need to execute a buyer representation agreement.

## 2. How do open houses work if it's not my listing?

The intent of the settlement is if you want to be paid when working with buyers, it has to be done through a buyer representation agreement, where the compensation is predetermined before you begin working with them. Practically speaking, it seems you always have the option of taking someone around the house without an agreement, but understand that you are working without an agreement to be paid.

If the buyer wants to work with you or you're going to have a continuing relationship where the buyer wishes to see other homes, then you will need to execute a buyer representation agreement.

## 3. Can listing agents show their listings to buyers without signing a buyer representation agreement?

Yes, if the listing agent is not representing the buyer and not being compensated for brokerage services being provided on behalf of the buyer.

## 4. Do I have to show a home if a buyer agent commission is not being offered?

Under the new rules, you will have agreed upon your compensation with the buyer using a buyer representation agreement prior to showing a home. As such, regardless of what the seller has or has not offered as a concession or as cooperative compensation, your purchase agreement will have the agreed upon compensation in it. Thus, you should show the home.

## 5. Can you have separate buyer representation agreements for each property you show a buyer?

In theory, yes.

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# NAR Settlement FAQs: Showing Properties

**6. If a buyer meets me, but won't sign an agreement, do I have to show the house?**

No.

**7. If we have a skittish buyer who doesn't want to enter into an agreement until they spend some time with the agent, are we precluded from showing them any houses listed in the MLS?**

Under NAR's settlement, you must now sign a buyer representation agreement before showing homes that you want to be compensated for selling as a buyer agent. It's not known how local boards and MLSs will enforce this rule change.

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# NAR Settlement FAQs: Conversations with Buyers and Sellers

**1. If you have a seller who is looking to list over the summer, what conversations are you having with them now?**

It's always a great time to sell your home if you can get the price and terms that you're looking for.

**2. I want to communicate with my database. What is the safest way to do so and what should I say?**

It's always a great time to buy the home you want if you can get it for the price you want. And it's always a great time to sell your home if you can get the price and terms you're looking for. These market dynamics have always been true and will always be true.

**3. How do we handle current sellers that we have listed now that are coming back to us and stating that they don't want to pay buyer agent commission?**

The fundamentals of selling a home haven't changed. We will offer your home for sale at a price that we believe the market will bear and that you're willing to sell for, we will market your home to expose it to all potential buyers, and we will consider any and all offers against your goals for selling.

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# NAR Settlement FAQs: Impact on the Market

## 1. Have times changed, and now service professionals market their prices?

Service professionals have always had to explain their value and negotiate their prices with clients. Some professionals choose to market themselves as a low-cost provider. The work is the work, and when professionals say they will take less, they more often than not do less.

## 2. How will appraisals be affected? For example, if 7 out of 10 homes don't have buyer agent compensation as part of the sale and 3 of the 10 do, will the extra commission wrapped into the loan make it harder to appraise? Or will the agent commission come off the appraisal altogether to get all the homes appraised using the same criteria?

Appraisers don't do market value plus or market value minus, they just do market value.

## 3. How do you see large-scale builders responding to this?

Builders are professional sellers and they will most likely do whatever the market requires in order to move inventory in a timely fashion. If represented by an agent, the rules of the settlement still apply. Buyer agent's compensation will still be determined by what is in the buyer representation agreement.

## 4. The news reporters make it sound like home prices are going to drop because now an agent's fee isn't "built in" to the sales price.

The one truth about real estate is the market determines the price. The laws of supply and demand govern real estate values in all markets at all times. Anyone who suggests anything else doesn't know what they are talking about.

## 5. What will the impact be on the number of transactions sold, prices of homes, and leases?

No one has a crystal ball, and that includes the media. People will still buy and sell houses in the same numbers that they were going to before these changes. Prices go up and prices come down, but over time the value of real estate always goes up.

Please remember that it is always the right time to buy or sell the right piece of real estate at the price that you're willing to accept.

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# NAR Settlement FAQs: Lawsuits

**1. What are the joining deadlines for any KW agents to be covered under the KW settlement?**

KW agents are automatically included. KW agents do not need to do anything else to be covered under the KW settlement.

**2. Does this settlement prevent copycat lawsuits from buyers?**

No, NAR's settlement resolves lawsuits that have been brought by home sellers. The lawsuits brought by home buyers will currently continue.

**3. When will we know more about the details of the KW settlement?**

There really isn't more to share. KWRI agreed to continue our policy of not requiring agents to join NAR, we paid \$70,000,000, and we admitted no wrongdoing.

**4. Does this settlement prevent copycat lawsuits from sellers?**

If approved by the court, NAR's settlement will resolve all the pending lawsuits brought by home sellers against NAR (and against anyone else who is released under the settlement, including agents who are members of NAR). The settlement will also prevent home sellers from filing new lawsuits based on past transactions. Like any settlement, new plaintiffs could try to bring new lawsuits based on future transactions. However, if the required changes are followed, the settlement takes away the liability arguments that the plaintiffs are currently making.

**5. Will KW agents and/or franchises be liable for the payoff? Who will pay the payoff?**

In 2023, KWRI paid a \$40M settlement, including attorney fees, on behalf of all KW agents and all KW Market Center Franchises to settle alleged TCPA violations. As far as the KW Sitzer-Burnett settlement is concerned, the same will be true. All KW agents and all KW Market Center Franchises will not come out of pocket for this settlement or attorney fees. It remains to be seen how NAR will be handling its settlement and what that will mean for all other non-KW members.

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