

## TALKING POINTS

### What to Know About the Practice Changes

- The implementation date for the practice changes set forth in the settlement agreement—August 17, 2024—is rapidly approaching.
- Beginning August 17 there are two major changes:
- First, cooperative compensation is prohibited on-MLS, but it is preserved as an option off-MLS through negotiation between consumers and real estate professionals.
  - Sellers and brokers can still offer compensation off an MLS, and they can still offer buyer concessions on an MLS, such as for buyer closing costs.
  - Offers of compensation are critical to helping make professional representation more accessible, decrease costs for home buyers to secure these services, increase fair housing opportunities, and increase the potential buyer pool for sellers.
  - The types of compensation available for buyer brokers will continue to take multiple forms, including fixed-fee commission paid directly by consumers, concessions from the seller, or a portion of the listing broker’s compensation.
  - Ultimately, commissions and fees will remain fully negotiable; the settlement preserves the ability of consumers to negotiate their broker’s compensation.
- Second, beginning August 17, agents and brokers working with a buyer must enter into a written agreement before touring a home as part of the settlement.
  - Written buyer agreements promote a transparent relationship between an agent and a consumer.
  - The settlement empowers buyers and agents to negotiate and mutually agree to services and compensation that work for them. This means that agents should work with consumers to make sure they fully understand their options, while continuing to seek fair compensation for their services.
  - This practice change does not require an agency relationship.

- Under the settlement agreement, new or revised forms must:
  - Specify and disclose the amount or rate of compensation the agent will receive to the extent that the agent will receive compensation from any source;
  - Clearly define how the agent will be compensated, and this must be objectively ascertainable and can't be open-ended;
  - Include a statement that the agent may not receive compensation from any source that exceeds what was agreed upon with the buyer; and
  - Conspicuously disclose that agent commissions are not set by law and are fully negotiable.
    - Listing and buyer agreements signed before August 17 that do not already address this must include an additional disclosure to this effect.
  - All NAR members should evaluate new or revised forms with an eye for clarity and emphasis on consumer choice.
- Similarly, when discussing written buyer agreements, it is important to emphasize that these agreements are negotiable and provide optionality for consumers, and to make sure consumers understand the requirement for an agreement before an in-person or virtual tour.
- NAR recommends that all MLSs implement changes by August 17, and REALTOR® MLSs (those owned exclusively by one or more REALTOR® Member Boards) must implement the changes by this date to remain in compliance with NAR policy.
- The practice changes should be implemented fully and in good faith, in the service of promoting consumer empowerment, consumer choice, and healthy competition.
- NAR members must abide by their ethical duty to treat all parties honestly and ensure that while negotiating, they are not treating anyone differently because of their race, sex, national origin, or other protected characteristic.

### **Supporting Consumers Through the Changes**

- As August 17 approaches, consumers will rely on NAR members to help them understand the coming changes and what they mean for them.
- This moment is an opportunity for NAR members to demonstrate the value they bring to each transaction.

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- When talking to consumers, focus on what matters to them most. This includes:
  - Reducing stress in a highly complicated and high-stakes transaction;
  - Serving as a trusted advisor and demystifying the home buying or selling process; and
  - Using your extensive experience to navigate difficult negotiations, write the best offer possible, set the right price for a listing, and help consumers avoid common mistakes.
- Always use clear, consumer-friendly language when discussing commissions and the changes to MLS policies, including:
  - What an MLS is; and
  - What will and won't be offered on MLS—it is important to explain that commissions are always negotiable and not set by law, what cooperative compensation is, and how commissions will be paid.
- For example, NAR members can explain that:
  - Offers of compensation, if they are made, are no longer allowed on MLSs—local marketplaces used by both buyer brokers and listing brokers to share information about home inventory.
  - However, listing brokers can still make offers of compensation off-MLS, and sellers and brokers can still offer buyer concessions on an MLS (for example, concessions for buyer closing costs)
- Explain that consumers will need to sign a written agreement with their agent before touring a home so that they understand exactly what services and value will be provided, and for how much.
  - Emphasize that these agreements are negotiable and provide optionality for consumers.
  - Agreements will be crafted to best meet the needs of the consumer including how long it lasts, what level of services will be provided, and a how an agent will be compensated.
  - Make sure consumers understand the requirement for an agreement before any in-person or virtual tour.