



## **AFFILIATE FAQ: NAR SETTLEMENT / POST-SETTLEMENT ENVIRONMENT**

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### **What has happened?**

On March 15, the National Association of Realtors (NAR) announced a proposed nationwide settlement agreement that would release the organization, association-owned MLSs, and the majority of its membership from liability in the multiple seller-initiated commission lawsuits, such as Sitzer/Burnett and Moehrl. The proposed settlement includes a payment by NAR of \$418 million as well as several changes in business practices.

### **What are the key business changes in the NAR settlement?**

Two proposed business changes are most relevant to RE/MAX affiliates, and they're expected to go into effect in mid-July 2024:

- Offers of compensation are still permitted, but they can't take place in the MLS.
- NAR would create a rule requiring a written agreement between buyers and their agent. The new rule would apply to any agents using the MLS.

### **Are all brokers and agents released in the NAR proposed settlement?**

The NAR proposed settlement releases all NAR members from liability with two exceptions: (1) brokerages with more than \$2 billion in residential sales volume in 2022, and (2) brokers and agents affiliated with HomeServices of America, the only remaining non-settling corporate defendant in the Sitzer/Burnett case. Brokerages that are over the threshold and not covered by an earlier settlement can opt in to the NAR settlement if they choose by paying a settlement amount and agreeing to practice changes, among other commitments. Defendants in the Sitzer/Burnett, Moehrl, Umpa, and/or Gibson cases are not able to opt in to the NAR settlement (for example, Compass, eXp, Redfin, Douglas Elliman, Weichert and United Real Estate).

### **What happens to RE/MAX brokerages over the 2022 \$2 billion sales volume threshold?**

Because RE/MAX already entered into a settlement agreement, the entire U.S. RE/MAX membership, including those over the \$2 billion threshold, are fully released from claims and future similar claims – pending final court approval.

### **How will the settlement change the way real estate business is conducted?**

Offers of compensation are still permitted, but they cannot take place in the MLS and Buyer representation agreements will be required for MLS participants.

Notably, the following 18 states already require written buyer agency agreements: Arkansas, Alaska, Georgia, Idaho, Maryland, Minnesota, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Pennsylvania, South Carolina, Utah, Vermont, Virginia, Washington and Wisconsin.

### **How will buyer agents be paid?**

According to NAR, buyer agents can be paid in multiple ways, including but not limited to:

- Buyer clients can pay their agents directly (in any manner the two parties agree to)
- Sellers can offer compensation in the form of a concession
- The listing broker can offer a portion of its compensation to the buyer agent (but not via the MLS)

Whatever the form of compensation, the terms will be negotiated between the agent and client.

### **Will cooperative compensation go away?**

Under the proposed NAR settlement, offers of compensation are still permitted, but they just can't take place in the MLS.

### **Is it possible for offers of compensation to be conveyed outside the MLS?**

Yes. NAR's settlement agreement does not prohibit offers of compensation made outside the MLS.

### **Can listing agents put other enticements on the MLS?**

Yes. Sellers would still be able to use the MLS to offer concessions such as covering buyer closing costs. The concessions, however, cannot be conditioned on the use of, or payment to, a buyer brokerage, buyer broker or other buyer representative.

### **Can buyers ask sellers to cover their buyer agent costs?**

If they choose to, buyers can ask the sellers to cover their buyer brokerage fee as part of the negotiation process.

### **Does this mean buyer agency will go away?**

Not at all. Buyer representation remains in place and is more important than ever given that all buyers working with an MLS participant agent will be under a buyer agreement going forward.

### **What is the likely timing of the changes?**

The proposed settlement requires court approval – a process that can take many months – but NAR expects to implement the two primary business changes (no compensation offers on the MLS, required buyer representation agreements) in mid-July 2024, even before final court approval.

### **When will the RE/MAX settlement receive final court approval?**

The RE/MAX settlement received preliminary approval in November 2023 and is set for a final approval hearing on May 9, 2024.

### **What should RE/MAX affiliates be doing now?**

- First, RE/MAX affiliates should continue to conduct their business with the security of being released – pending final court approval of the RE/MAX settlement – and protected from liability in these lawsuits.
- Second, they should start preparing for the two rule changes expected to take place in July. This includes updating their marketing, buyer presentation materials and buyer representation agreements.
- Third, they should sharpen their skills in articulating their value to clients. This includes learning to speak to clients in a clear, transparent way about the value they provide and how they are compensated for that.

- Fourth, they should stay updated on the developments while steering clear of the panic and fear being spread by many in the industry and media. The terms in the proposed NAR settlement would change some aspects of the business, but RE/MAX agents are in a position to navigate any adjustments.

#### **How will RE/MAX, LLC help affiliates navigate the post-settlement landscape?**

RE/MAX, LLC has developed materials and resources to help affiliates navigate the post-settlement landscape. From education and consultations to marketing and consumer messaging, RE/MAX, LLC will continue to support affiliates in every way.

#### **What can/should RE/MAX affiliates tell buyers and sellers about the changes?**

As always, honesty, truthfulness and transparency are the best elements in these conversations. Agents working with sellers must be able to explain the new landscape and what that means in terms of the commission – which is always negotiable. Agents working with buyers must be able to explain the new landscape, outline the services they will provide, and articulate their value – all of which contributes to a conversation about how and how much they expect to be paid.

#### **How could the changes impact commissions?**

Only time will tell. But any level of commission that was possible before the settlement is and will be possible after it. All commissions are negotiable – as they have been. Ultimately, as has always been the case, it's up to individual brokerages, teams and individual agents to determine what they want to charge – and to develop an attractive value proposition that helps secure it.

#### **How could the settlement impact MLS services?**

Association-owned MLSs that comply with the practice changes are released in the NAR proposed settlement, so they will operate as before – although they will adjust their systems to eliminate the “offer of compensation” field. MLSs not owned by a Realtor association are not covered by the proposed settlement. They can, however, join the settlement by paying a per-subscriber fee to the settlement fund. If they do so, they must adhere to the new rules as well.

#### **How can RE/MAX affiliates learn to have a “commission conversation” with buyer clients?**

RE/MAX agents provide a great deal of value to buyers and sellers. Ahead of the new rules being implemented in mid-July, RE/MAX affiliates will have ample opportunity to master this dialogue – via avenues such as education, coaching, office meetings and/or regional events. As always, RE/MAX, LLC will provide resources and support along the way.

#### **In retrospect, should RE/MAX have settled so early?**

The RE/MAX, LLC nationwide settlement announced in September – shortly before the Sitzer/Burnett trial began in Missouri – has proven to be a great decision. If RE/MAX, LLC hadn't settled prior to NAR's proposed settlement, RE/MAX affiliates would be facing the same liability now confronting HomeServices of America and its affiliated companies. Also, without the RE/MAX settlement in place, the very top RE/MAX brokerages (over the \$2 billion mark in 2022 sales volume) would be unprotected at this time.

#### **Who should RE/MAX affiliates contact for more information?**

As always, the regional teams are the primary resource for affiliates with questions or concerns about anything connected to the RE/MAX settlement.