



FAQs

NAR PROPOSED SETTLEMENT PRACTICE CHANGES

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1. What are the primary practice changes agreed to in the NAR settlement?

The practice changes fall into two buckets. The first bucket deals with cooperative offers of compensation. The second bucket deals with written buyer agreements.

Cooperative Compensation

- NAR may not require that listing brokers or sellers make compensation offers to buyer's agents, nor require any compensation offers to be blanket, unilateral or unconditional.
- NAR will prohibit offers of compensation to buyer brokers, disclosure of listing agent compensation, and disclosure of total compensation on the MLS. Compensation fields will be eliminated in the MLS and no other fields may be used for this purpose.
- Participation in MLS may not be conditioned upon making or accepting offers of compensation to buyer brokers.
- NAR and MLSs may not create, facilitate or support any non-MLS mechanism for listing brokers or sellers to make offers of compensation to buyer brokers.
- Listing brokerages and listing brokers may still, through non-MLS mechanisms, display and communicate offers of compensation to buyer brokers for their own listings (such as through direct negotiation with buyers or buyer's agents or on a brokerage website).
- REALTORS® and REALTOR® MLS participants representing 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 representative of the buyer (including an attorney). Such disclosure must be in writing, provided in advance of any agreement to pay a buyer representative and specify the amount or rate of such payment.

- REALTORS® and REALTOR® MLS participants and subscribers may not filter out or restrict MLS listings communicated to their customers or clients based on the existence or level of compensation offered to the buyer representative.

Written Buyer Agreements

- All REALTOR® MLS participants must enter into a written agreement with buyers before touring a home with the buyer.
- If buyer's agent will receive compensation **from any source** the agreement must conspicuously disclose the amount or rate of compensation the buyer's agent will receive or how this amount will be determined. The amount of compensation must be objectively ascertainable and not open-ended (no "buyer broker compensation shall be whatever the seller is offering").
- REALTORS® and REALTOR® MLS participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the written agreement with the buyer (buyer's agent cannot accept cooperative compensation in excess of the fee they charge buyer in the agreement with buyer).
- REALTORS® and REALTOR® MLS participants may not represent to a client or customer that their brokerage services are free or available at no cost to their clients unless they will receive no compensation from any source.

2. When will the changes agreed to in the NAR settlement and Oregon's new buyer representation law take effect? Do I need to do anything now?

The NAR settlement still needs to be approved by the court, and NAR still needs to write rules to effectuate the settlement. The earliest that is likely to happen is mid-July. Oregon's new law requiring buyer representation agreements doesn't take effect until January 1, 2025.

For now, this means that cooperative compensation offers are still allowed on the MLS and written agreements with buyers are not required. Nevertheless, buyer representation agreements are and always have been a good idea and there is no reason to delay in using them.

3. When cooperative compensation offers are disallowed on the MLS, what options do buyers have to get assistance from the listing agent or seller in paying the buyer's agent's fee, and what impact will this have on financing?

The buyer's agent's compensation will be set by the buyer representation agreement and the buyer will owe that agent the amount they agree to pay. However, there are at least two ways that a buyer can still get assistance from the listing side of the transaction to fund the buyer's agent's fee out of the proceeds of the transaction.

- 1. Cooperative compensation.** Cooperative compensation (payment from listing agent to buyer's agent) will still be allowed, it just won't be able to be communicated via the MLS. Just as is done today, when entering into a listing agreement and establishing the listing agent's fee, the listing agent and seller will discuss and agree on whether to offer a buyer's agent cooperative compensation. The listing agent and seller can agree to a specific amount, they can agree to an "up to" amount, or they can just agree that they will entertain requests from buyers/buyer's agents without setting a particular amount upfront. Remember, the Buyer's agent's fee will be set between the buyer and the agent in the buyer representation agreement. While sellers and listing agents can still choose to make "blanket" and "unilateral" offers of compensation, there will be no requirement that they do so. Listing agents and sellers who wish to offer cooperative compensation may decide that it's best to negotiate cooperative compensation based on the particulars of the transaction and the buyer's agent's fee, rather than making blanket offers. Ultimately, any amount that is agreed to be paid as cooperative compensation from a listing agent to a buyer's agent must be authorized by the seller in advance.
- 2. Seller Concessions.** The other way that a buyer can get help from the listing side of the transaction in paying a buyer agent fee is by asking for seller concessions. This can be done in the sale agreement, and Oregon REALTORS® has already updated its sale agreement and created an addendum (Form 2.24) to facilitate this.

It's yet to be seen how lenders will treat these contributions for purposes of "Interested Party Contribution" ("IPC") limits for loans. Historically, cooperative compensation has not been considered an interested party contribution and there is no reason to believe that an off-MLS offer of compensation would be treated differently than an on-MLS offer of compensation, but until Fannie Mae and Freddie Mac weigh in, we are speculating.

With seller concession most lenders are currently treating seller concessions for buyer agent fees as an interested party contribution, but some are not. Again, until Fannie Mae and Freddie Mac weigh in on this (which we expect they will do if and when the settlement is finalized) the best strategy is for a buyer to consult directly with their lender about how these payments for buyer broker fees will be treated.

4. What are the details of the new requirements to use written agreements with buyers, both from Oregon law and the NAR settlement?

First off, the Oregon law ([HB 4058](#)) doesn't take effect until January 1, 2025 and the NAR settlement requirement won't take place until mid-July 2024 at the earliest.

HB 4058 requires buyers agents to use a written representation agreements with their clients. The bill defines a representation agreement to be "a contract between an agent and buyer of real property that authorizes the agent, in exchange for compensation, to act

on behalf of the buyer in purchasing real property or identifying real property for purchase.” The agreement must be in place before, or as soon as reasonably practicable after, the agent has commenced efforts to assist the buyer in purchasing real property or in identifying real property for purchase. In practice this means that the agent could have an initial conversation about the buyers needs or show a house before entering into the agreement, but the agent could not do ongoing work for the client without the agreement in place. Oregon REALTORS® believed that this degree of flexibility was necessary to allow agents and buyers to have some degree of interaction before deciding whether to move forward with an agency relationship and a written compensation agreement.

HB 4058 also states that the agreement must contain the statutory duties that a buyer’s agent owes their client, either directly or by referencing the Initial Agency Disclosure Pamphlet. It may not last more than 24 months, unless actively renewed by both parties.

The NAR settlement requires NAR to make a rule requiring agents who participate in the MLS to use written agreements with buyers before touring a home with the buyer. The details of the rule have not been written yet, so anything we say at this point is speculative. The settlement agreement does not specify that the written agreement must be a representation agreement. It could be a non-representation agreement (“I’m showing you this house but I’m not your agent and I’m not going to write an offer for you.”) or it could be a limited scope or duration agreement (“I’ll show you this house and if you want to buy it I’ll write an offer for you, and here is what/how I expect to be paid, but this agreement does not extend beyond this particular house.”). Under the NAR settlement, the yet-to-be-written NAR rule must specify that if the agent expects to be compensated in any fashion in relation to the home they are showing or their work for the buyer, the written agreement must conspicuously specify the details of the compensation arrangement, which must be objectively ascertainable. “My fee is whatever the listing agent or seller is willing to pay me” is NOT ok. Until NAR writes the actual rule, we can’t get into any more detail.

5. The settlement says we can’t sort listings based on the existence or amount of compensation offered to the buyer’s agent but what if our buyer instructs us that they only want to see properties offering cooperative compensation?

We will have to wait and see what the actual language of the NAR rule says. However, given that listing agents may be willing to negotiate cooperative compensation even if they are not advertising it, and given that buyers can ask for contributions to their agent’s fees as seller concessions, it is unclear why a buyer would only want to see properties offering cooperative compensation *in advance*. Everything is negotiable, and the buyer may find a house they really like where the listing agent or the seller is willing to assist in paying buyer’s agent’s fees even though they this was not advertised upfront.

6. What if a listing agent or seller is offering buyer agent compensation that is greater than what the buyer and buyer’s agent agreed to in the buyer representation agreement?

The settlement agreement states that REALTORS® and REALTOR® MLS participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the written agreement with the buyer. At the same time, Oregon law prohibits commission sharing or rebates to non-licensed individuals, including clients. Thus, REALTORS® and MLS participants would need to reject any excess compensation. In practice, this would be a discussion and a negotiation between the listing agent and the buyer's agent in coordination with their clients. Ultimately, the listing agent and buyer's agent would agree on an amount of cooperative compensation that does not exceed the amount in the buyer representation agreement. This question highlights some of the considerations related to offering "blanket" or "unilateral" compensation in a world where buyer agent fees are set in the buyer representation agreement between the buyer and the buyer's agent. While making off-MLS unilateral offers will be allowed, it will not be required and it isn't well-tailored to the reality of how buyer agent fees will be established.

7. Will there be changes to forms?

Yes. Oregon REALTORS® has already updated its forms to facilitate buyer requests for seller concessions to assist buyers in paying for buyer agent fees (Sale Agreement + [Form 2.24](#)). We also added a new form. ([Form 9.10](#)) to memorialize cooperative compensation agreements between agents. If the court approves the settlement and NAR writes new rules, we anticipate that we will make some additional updates to these documents, and also to our Listing Agreement and Buyer Representation Agreement.