



Understanding the NAR Settlement

NAR announced a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions, and release most NAR members of liability in these matters. The settlement, which is subject to court approval, makes clear that NAR continues to deny any wrongdoing in connection with the Multiple Listing Service (MLS) cooperative compensation model rule (MLS Model Rule). However, the settlement will result in new NAR rules that require buyer representation agreements for MLS participants and that prohibit offers of compensation on the MLS.

WHEN WILL I HAVE TO START USING A BUYER REPRESENTATION AGREEMENT?

- Under the NAR settlement—which still needs to be approved by the court—beginning in mid-July of 2024 MLS participants will be required to use buyer representation agreements. Buyer representation agreements have always been a best practice and through the leadership of Oregon REALTORS® the Oregon Legislatures passed a law that requires them beginning January 1, 2025. So, the NAR settlement only accelerates what was already going to happen in Oregon.

DOES THIS MEAN AS A LISTING AGENT I CANNOT OFFER COOPERATIVE COMPENSATION TO THE BUYERS AGENT?

- The NAR settlement terms would prohibit offers of compensation to buyer's agents through the MLS. However, negotiations of cooperative compensation outside of the MLS are not prohibited.
- This means clients and their agents can work together to negotiate and memorialize cooperative compensation outside of the MLS, and sellers and buyers can directly negotiate in the sale agreement for any seller contributions to buyer brokerage compensation. Sellers will be allowed to communicate offers of seller concessions through the MLS, including contributions to buyer's closing costs (which buyers can use to pay buyer agent fees), so long as the concessions are not conditioned on being used to pay a buyer agent fees.

WHAT WILL SPECIFIC MLS RULE CHANGES LOOK LIKE?

- NAR has yet to publish updated model rules for MLSs, but we expect them to do so between now and July.
- Each MLS is independently operated, and Oregon REALTORS® has no control or influence over MLS rules.

- We encourage you to discuss this with your MLS, and NAR will be providing updates as they develop new rules.

WILL THERE BE CHANGES TO FORMS?

- Oregon REALTORS® forms have already been updated to make it easy for a buyer and seller to negotiate seller closing cost contributions that can be used to pay for buyer brokerage fees (see Section 4 of Sale Agreement and Form 2.24). Our Buyer Representation Agreement is compliant with Oregon's new law that takes effect January 1, 2025, and while NAR will require the use of a written buyer representation agreement beginning mid-July, we do not expect that the rule will dictate the content of the agreement.
- That being said, given the magnitude of the changes taking place (such as the prohibition on offers of compensation through the MLS) we do anticipate that we will make updates to our sale agreement documents, buyer representation agreement, and listing agreement to reflect the new realities we expect to take effect in mid-July. For now, cooperative compensation is still allowed to be offered in the MLS and therefore certain changes would not be appropriate until after the new rules take effect.

WHERE CAN I LEARN MORE AND GET PREPARED FOR THESE CHANGES?

- Visit Oregon REALTORS® Resource Hub at www.oregonrealtors.org/BBA with great videos, handouts, live and on-demand classes, factsheets, and other content regarding the use of buyer representation agreements and talking to clients about broker compensation. We will continue to update this hub as the new rules that will come into effect in July become clearer.



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