



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 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 resulted in new NAR rules that require buyer representation agreements for MLS participants and that prohibit offers of compensation on the MLS.

ARE BUYER REPRESENTATION AGREEMENTS NOW REQUIRED?

- MLS rule changes aligning with the Settlement terms went into effect on or before August 17, 2024. MLS participants are now required to have a written representation agreement in place before touring a home with a Buyer. Buyer representation agreements have long been a best practice. Through the leadership of Oregon REALTORS®, the Oregon Legislature passed a law requiring them beginning January 1, 2025.

CAN A LISTING AGENT OR SELLER STILL HELP COMPENSATE THE BUYER'S AGENT?

- The NAR settlement agreement prohibits offers of compensation to buyers' agents through the MLS, requires that buyer agent fees be set between the buyer and buyer's agent in the buyer representation agreement, and prohibits the buyer's agent from receiving compensation in excess of the amount agreed to in the buyer representation agreement. However, there are still two ways in which a seller can help a buyer offset the cost of buyer agent fees:
- Sellers and buyers can directly negotiate in the sale agreement for any seller contributions to buyer brokerage fees.
- Clients and their agents can work together to negotiate and memorialize cooperative compensation (listing agent sharing compensation with buyer's agent) outside of the MLS. Though not prohibited by the settlement, the U.S. Department of Justice looks unfavorably on this practice. Also, because the buyer's agent fee will be unknown at the time of entering a listing agreement, cooperative compensation offers may be ill-suited for the new environment.

WHAT ARE THE SPECIFIC MLS RULE CHANGES?

- NAR model rule changes can be found here.
- Check with your MLS. Each MLS is independently operated and will make its own rules. Oregon REALTORS® has no control or influence over MLS rules.

ARE THERE CHANGES TO FORMS?

- Changes have been made to the Oregon REALTORS® Listing Agreement, Buyer Representation Agreement, and Purchase and Sale Agreements to help members comply with the settlement agreement and to help clients facilitate efficient negotiations.
- The updated Oregon REALTORS® forms became available July 29, 2024. Previews, explanations, and trainings can be found on the site at the QR code, below.
- Oregon Real Estate Forms (OREF) has also updated its forms which can be found here.
- Each MLS has likely updated its own forms, including listing agreements.

WHERE CAN I LEARN MORE ABOUT THESE CHANGES?

- NAR has a great website with all the latest information on the settlement. <https://www.nar.realtor/the-facts>.
- 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 information becomes available.



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TO VISIT THE OREGON
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