

**MLS & ASSOCIATIONS**

# NAR-DOJ rule changes won't come for months

Rules regarding public display of buyer broker commissions and lockbox access for non-Realtors were originally slated to take effect by the end of March



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BY [ANDREA V. BRAMBILA](#)

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Anyone waiting for the [National Association of Realtors](#) to change its rules to allow public display of [commissions](#) or universal lockbox access for non-Realtors will have to sit tight awhile longer.

The U.S. Department of Justice ([DOJ sued](#) the 1.4 million-member trade group in November, alleging some of its rules are illegal restraints on Realtor competition. The federal agency filed a proposed settlement at the same time as it filed [the antitrust suit requiring NAR to repeal or change](#) several rules regarding buyer broker commissions and lockbox access.

The same rules are also at issue in another antitrust lawsuit filed against NAR and others last week alleging that the trade group is involved in a conspiracy to inflate commissions.

NAR said in November that the trade group would be working with the DOJ to agree on exact rule changes within 45 days and then hold a special, virtual meeting of the NAR board of directors to approve the new rules. NAR anticipated the new rules would take effect in the first quarter of 2021.

But on Tuesday NAR spokesperson Mantill Williams told Inman that the trade group was continuing to work through the details of the rule changes with the DOJ, “which is a process that can take months.”



Mantill Williams

“[O]nce we work out the details with the DOJ, we will go to the board,” Williams said via email. “We hope that would happen at or before the scheduled meeting in May. And then we would expect to have a reasonable amount of time to implement the changes. We do not have definitive timing because this is a joint process we are going through with the DOJ.”

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NAR's midyear conference, which [will be virtual](#), will be held May 3-14 and the board of directors meeting will take place May 14. That meeting will be closed to press and to members of NAR who are not part of the board, according to [NAR's website](#).

NAR declined to comment on the reasons behind the delay, on when the settlement was expected to be approved by the court, and on whether the association had hired or appointed an antitrust compliance officer, as required by the proposed settlement.

The DOJ declined to comment for this story.

The proposed settlement requires NAR to:

- Repeal any rule, and to require its member boards and multiple listing services to repeal any rule, that "prohibits, discourages, or recommends against an MLS or MLS Participant publishing or displaying to

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consumers any MLS database field specifying compensation offered to other MLS Participants.”

- Adopt a rule that requires all MLS participants, including subscribers, to provide to clients information about the amount of compensation offered to other MLS participants.
- Repeal any rule, and require all member boards and MLSs to repeal any rule, that permits all MLSs and MLS participants, including buyer brokers, to represent that their services are free or available at no cost to their clients. NAR must also prohibit all MLSs and MLS participants from representing that their services are free or available at no cost to their clients.
- Adopt a rule that prohibits MLS participants from filtering or restricting MLS listings that are searchable by or displayed to consumers based on the level of compensation offered to the buyer broker or the name of the brokerage or agent, and repeal any rule that permits or enables such filtering.
- Adopt a rule that requires all member boards and MLSs to allow any licensed real estate agent or agent of a broker, to access, with seller approval, the lockboxes of those properties listed on an MLS.

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At least one brokerage, [REX Real Estate](#), said [in January](#) that, after the settlement was announced, REX sent out correspondence demanding immediate access to lockboxes from Realtor associations where it's had trouble conducting operations. However, according to REX CEO Jack Ryan, NAR wrote to him notifying him



Jack Ryan | Credit: REX

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Jack Ryan | Credit: REX

that associations would have until March 2021 to make the changes required in the settlement.

"No rule changes will take effect in March," NAR's Williams told Inman. Inman reached out to REX to ask for comment now that the rule changes have been delayed, but REX did not respond.

Ryan has previously said REX provided [recordings of agent steering](#) to the DOJ before the agency sued NAR. REX filed suit earlier this month against [NAR and Zillow](#), [alleging antitrust](#) violations for NAR rules that require Zillow to segregate non-MLS listings from MLS listings on its website, including listings from REX, which eschews MLSs.

Some 65 MLSs, including the nation's largest, have changed their rules on displaying buyer broker commissions in advance of the anticipated NAR rule changes, prompting [Redfin](#) to announce in early February that it would begin to display buyer agent commissions in those markets. California Regional MLS ([CRMLS](#)) began [allowing](#) the public display of such commissions on Feb. 15.

*Email Andrea V. Brambila.*

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## COMMENTS

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**Fred Glick**

Why are they taking their time? This is a no brainer.

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**Edric Williams**

This seems good on the surface but the intent to be transparent may backfire. The disclosure will create a false sense that commissions are a negotiable part of the transaction after agency agreements are acknowledged. Commissions are not a negotiable term of a sale between a buyer and seller exclusively. The result will be agents suing clients for compensation because they have been forced by DOJ to make their compensation a term of negotiation by implication. This would be the same as someone buying a car and making the dealer's commission a term of the sale. I hope NAR can figure out a productive way to create transparency for the consumer without jeopardizing its members' ability to defend their livelihoods.

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**Kevin McGrath**

NAR should have told the DOJ to pound sand. This is class action attorney money grab. No more; no less.

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