

NAR SETTLEMENT UPDATE

Kanawha REALTORS®

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NATIONAL
ASSOCIATION OF
REALTORS®



OVERVIEW

- Settlement Terms
- Practice Changes
- Class Notice
- Looking Forward
- Resources



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SETTLEMENT TERMS

SITZER-BURNETT

- Sitzer-Burnett is a class-action lawsuit that was filed in Missouri federal court by a group of home sellers in the state against NAR and other defendants, including Anywhere, Berkshire Hathaway HomeServices, Keller Williams, and RE/Max.
- **NAR strongly disagrees with the October 2023 verdict and maintains that compensation has been and continues to be negotiable.**

PROPOSED SETTLEMENT AGREEMENT

- On March 15, 2024, NAR announced a proposed settlement agreement that would end litigation of claims brought on behalf of home sellers related to broker commissions.
- The settlement is subject to final court approval, with a hearing set for November 26, 2024.

KEY SETTLEMENT TERMS

1. Release of liability

- The agreement would resolve claims against NAR, over one million NAR members, all state/territorial and local REALTOR® associations, all association-owned Multiple Listing Services (MLSs), and all brokerage entities with an NAR member as principal that had a residential transaction volume in 2022 of \$2 billion or below.
- The agreement provides a mechanism for nearly all brokerage entities that had a residential transaction volume in 2022 that exceeded \$2 billion to obtain releases efficiently if they chose to use it.

2. Offers of compensation prohibited from the MLS

- NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS.
- This change went into effect on **August 17, 2024**.

KEY SETTLEMENT TERMS

3. Written agreements for MLS participants acting for buyers

- The settlement provides that MLS participants working with buyers must enter into written representation agreements with those buyers.
- This change went into effect on August 17, 2024.

4. Settlement payment

- Under the terms of the agreement, NAR would pay \$418 million over approximately four years.
- NAR's membership dues for 2024 and 2025 will not change because of this payment.

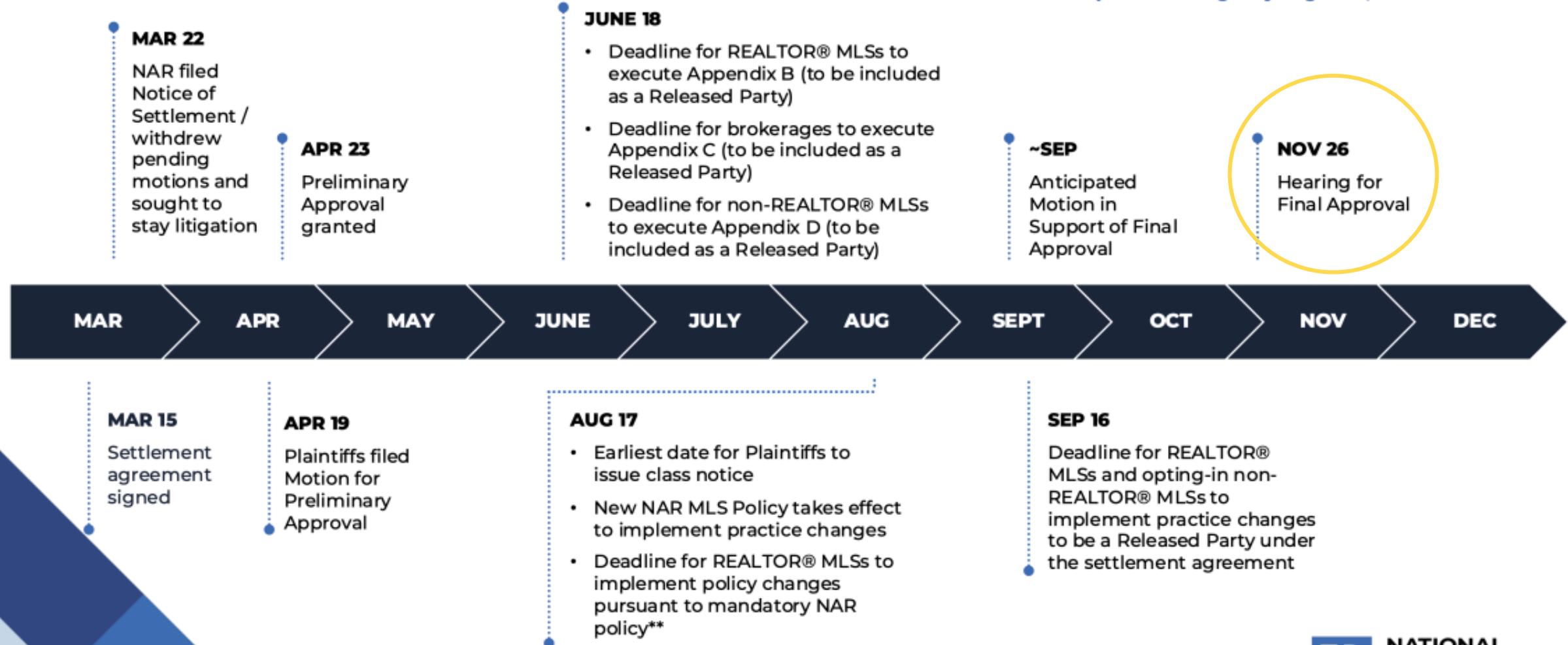
5. NAR continues to deny any wrongdoing

- The settlement, which is subject to court approval, makes clear that NAR continues to deny any wrongdoing in connection with the MLS cooperative compensation model rule (MLS Model Rule) that was introduced in the 1990s in response to calls from consumer protection advocates for buyer representation.

KEY UPDATES

- New FAQs and resources posted at facts.realtor
- Broker slide deck to help understand and communicate the changes
- New Consumer Guide Series
 - Consumer Guide to Written Agreements
 - Consumer Guide to Open Houses
 - REALTORS® Duty to Put Client Interests Above Their Own

NAR SETTLEMENT TIMELINE*





PRACTICE CHANGES

KEY PRACTICE CHANGE AREAS



- Offers of Compensation
- Listing Agreements
- Written Buyer Agreements

OFFERS OF COMPENSATION

- Effective August 17, offers of cooperative compensation are **PROHIBITED** on a REALTOR® association owned MLS*, per new MLS policies
 - Includes all listing types (residential, commercial, rental) that appear on the MLS
 - Cannot post a link on MLS directly to a listing on the broker's site which includes an OOC
- Offers of compensation remain an option, **off-MLS**
- Consumers will continue to have choices regarding real estate services

**And non-REALTOR® association owned MLSs that opted in to the settlement.*

OFFERS OF COMPENSATION

- Listing brokers may advertise an offer of compensation in any way off-MLS, including:
 - On the listing, on their own website
 - Signs and sign riders
 - Flyers
 - Social media posts
 - Text, email, phone calls
- MLS/IDX may not be used to create, facilitate or support a platform for offers compensation from multiple brokers

PRACTICE NOTE

Once agreed to, listing & buyer broker should put compensation agreement in writing

OFFERS OF COMPENSATION

- Seller concessions are allowed on MLSs, at the MLS's discretion
 - Cannot be limited to or conditioned upon the retention of or payment to a cooperating broker
 - Buyer should state in the purchase offer how they want the concessions to be used, including compensating their broker
- Buyers may ask the seller to pay their broker's fee as a term of the purchase agreement
 - Does not violate SOP 16-16

OFFERS OF COMPENSATION

- Code of Ethics **always** applies to REALTORS®, for example:
 - Article 1 – protect/promote interests of client
 - Article 3 – ascertain compensation
 - Article 9 – put it in writing
 - Article 12 – be honest and truthful in communications
- Mediation and arbitration of commission disputes still applies
- Procuring cause disputes may still arise and be arbitrated

LISTING AGREEMENTS

Required terms:

1

State conspicuously that broker commissions are not set by law and are fully negotiable

2

Conspicuously disclose to sellers and obtain seller approval for any payment or offer of payment that a listing broker will make to another broker or other representative (e.g., real estate attorney) acting for buyers, and specify the amount or rate of such payment

WRITTEN BUYER AGREEMENTS

Two triggers for a written agreement:

- “Working with a buyer”
- “Touring a home”

WHAT DOES THAT MEAN?

Working with a buyer:

MLS Participants who **provide brokerage services** to a buyer

- Identifying potential properties
- Arranging for the buyer to tour a property
- Negotiating on behalf of the buyer
- Writing and presenting offers

As opposed to MLS Participants who simply market their services or just talk to a buyer—like at an open house or providing an unrepresented buyer access to one of their listed homes

WHAT DOES THAT MEAN?

Touring a home:

- When the buyer and/or the MLS Participant (or other agent, at the direction of the MLS Participant working with the buyer) **physically enter the home**
- Includes when the MLS Participant or other agent, at the direction of the MLS Participant, working with the buyer enters the home to provide a **live, virtual tour** to a buyer not physically present

WHEN DOES IT NEED TO BE SIGNED?

“Before touring a home”

UNLESS

State law dictates an earlier time

WHAT ARE THE REQUIRED TERMS?

1

A specific and conspicuous disclosure of **the amount or rate of compensation** the Participant will receive or how this amount will be determined, to the extent that the Participant will receive compensation from any source

2

The amount of compensation in a manner that is **objectively ascertainable** and not open-ended

WHAT ARE THE REQUIRED TERMS?

3

A term that **prohibits** the Participant from receiving compensation for brokerage services from any source that **exceeds the amount or rate agreed** to in the agreement with the buyer

4

A conspicuous statement that broker fees and commissions **are not set by law** and are fully negotiable.

WHAT TYPES OF AGREEMENTS?

Any type of written agreement can be used*

- Exclusive buyer representation agreement
- Non-exclusive buyer rep agreement
- Non-agency
- Transactional
- Limited service
- Designated agency
- Dual agency
- One property, one weekend ...

**Must comply with state law*

WHAT TYPES OF AGREEMENTS?

NAR policy does not dictate:

- What type of relationship the professional has with the potential buyer (e.g., agency, non-agency, subagency, transactional, customer).
- The term of the agreement (e.g., one day, one month, one house, one zip code).
- The services to be provided (e.g., ministerial acts, a certain number of showings, negotiations, presenting offers).
- The compensation charged (e.g., \$0, X flat fee, X percent, X hourly rate).

CONSUMER GUIDE TO WRITTEN BUYER AGREEMENTS



CONSUMER GUIDE:

WHY AM I BEING ASKED TO SIGN A WRITTEN BUYER AGREEMENT?

If you're a homebuyer working with an agent who is a REALTOR®, it means you are working with a professional who is ethically obligated to act in your best interest. As of August 17, 2024, you will be asked to sign a written buyer agreement after you've chosen the professional you want to work with. Here's what you should know about these agreements:

What is a "written buyer agreement?" What does it do? A written buyer agreement is an agreement between you and your real estate professional outlining the services your real estate professional will provide you, and what they will be paid for those services.

Why am I being asked to sign an agreement? Written buyer agreements became a nationwide requirement for many real estate professionals as a part of the National Association of REALTORS® proposed settlement of litigation related to broker commissions. The requirement went into effect on August 17, 2024.

Are these agreements new? In some places, yes. Many states have required them for years, while some have not. As a result, it is entirely possible you or others you know have not used them in the recent past. Regardless, they are now a nationwide requirement for many real estate professionals.

Are these agreements negotiable? Yes! You should feel empowered to negotiate any aspect of the agreement with your real estate professional, such as the services you want to receive, the length of the agreement, and the compensation, if any. Compensation between you and your real estate professional is negotiable and not set by law. In the written agreement, the compensation must be clearly defined (e.g., \$0, X flat fee, X percent, X hourly rate)—and not open-ended or a range. Only sign an agreement that reflects what you have agreed to with your real estate professional.

How do I benefit from these agreements? These agreements clearly lay out what services you (as a homebuyer) expect your real estate professional to provide, and what your real estate professional will be paid. These agreements make things clear and reduce any potential confusion at the outset of your relationship with your real estate professional.

When do I need to sign an agreement? You will be asked to enter into a written buyer agreement with your real estate professional before "touring" a home with them, either in-person or virtually. If you are simply visiting an open house on your own or asking a real estate professional about their services, you do not need to sign a written buyer agreement.

Does this mean I have to pay my real estate professional out of pocket? Not necessarily. While you are responsible for paying your real estate professional as outlined by your agreement, you can still request, negotiate for, and receive compensation for your real estate professional from the seller or their agent.

Do agreements dictate a specific type of relationship I need to have with my real estate professional? No—you are allowed to enter into any type of business relationship with your real estate professional allowed by state law where you are purchasing a home.



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WHAT DOES THAT MEAN?



**Is attending an open house
“touring a home” that needs
a written buyer agreement?**

NO.

CONSUMER GUIDE TO OPEN HOUSES



CONSUMER GUIDE: OPEN HOUSES AND WRITTEN AGREEMENTS

As of August 17, 2024, many real estate professionals nationwide will be asking buyers to enter into a written agreement prior to touring a home. But what if you are just attending an open house? Here's what you should know:

I am attending an open house without an agent. Do I need a written buyer agreement in order to tour the home? No. If you are simply visiting an open house on your own or asking a real estate professional about their services, you do not need to sign a written buyer agreement.

Is an agent who is hosting an open house required to enter into written agreements with the potential buyers who attend the open house? No. In this case, since the agent is only there at the direction of the listing broker or seller, the agent is not required to have a written agreement with the buyers touring the home.

When will I be asked to sign an agreement with an agent? After you begin "working with" an agent and at any point before you tour your first house together.

What does "working with" an agent mean? A buyer is "working with" an agent as soon as the agent begins to provide services, such as identifying potential properties and arranging tours. Agents who are simply marketing their services or speaking to a buyer—at an open house or by providing a buyer access to a house they have listed—are not considered to be working with the buyer.

What does it mean to "tour" a home? Under the terms of the settlement, a "tour" is when a buyer who is working with an agent enters a home that is for sale or directs their agent to enter the home on their behalf. This includes when the buyer's agent provides a live, virtual tour to a buyer not physically present.

What is the purpose of written buyer agreements? Clarity and transparency. Written buyer agreements lay out the services your real estate professional will provide and what they will be paid. Buyers should not sign anything that includes terms they do not agree with or do not understand. You are in the driver's seat with these agreements, which are fully negotiable.

Where can I learn more about buyer agreements? NAR has created a dedicated resource on written buyer agreements [here](#).

Information and resources, and consult your state law where you are



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WHAT DOES THAT MEAN?



**Does a prospective tenant
need to sign a written buyer
agreement?**

NO.

WHAT DOES THAT MEAN?



**Does a commercial buyer
need to sign a written buyer
agreement?**

NO.

WHAT DOES THAT MEAN?



Does a buyer looking for a house to use as a STR need to sign a written buyer agreement ?

YES.

WHAT DOES THAT MEAN?



**Do I need a written buyer
agreement to send listings to a
prospective buyer?**

NO.



CLASS NOTICE

WHAT IS CLASS NOTICE?

Following preliminary approval of a proposed class action settlement agreement, the court will direct notice in a **reasonable manner** to **all class members** who would be **bound by the proposed settlement**.

WHEN WILL CLASS NOTICE BE SENT?

**Class notice was published on
August 17, 2024.**

WHO WILL RECEIVE CLASS NOTICE?

Class notice will be directed to members of the nationwide Settlement Class:

“All persons who sold a home that was listed on a multiple listing service anywhere in the United States where a commission was paid to any brokerage in connection with the sale of the home . . .”

LISTING DATES VARY BY STATE OR MLS

WHAT IS CLASS NOTICE?

Class notice typically includes information about:

- The litigation
- The settlement
- The definition of the class
- Opt-out procedures
- The requested attorneys' fees and incentive awards to the class representatives (if any)
- The objection process
- The scheduled date for the final fairness hearing

CLASS NOTICE – WHAT TO EXPECT

- Expect direct notice to settlement class members, targeted digital efforts, and other means to reach class members
- Expect questions from consumers
- **Always direct these questions to the Claims Administrator website:**

www.realestatecommissionlitigation.com

A pair of binoculars with blue and orange eyecups is positioned on a map of the United States. The map shows the outlines of the states and major rivers. The binoculars are angled towards the horizon, suggesting a look into the future. The background is a soft-focus landscape with a body of water and a distant shoreline.

LOOKING FORWARD

WHAT HAS TO CHANGE?

- Embrace the practice changes
- Use the new forms for listing agreement and buyer rep agreements
- Learn to articulate your value as a REALTOR®
- Get comfortable with the compensation conversation
- Explain marketing methods and costs

WHAT HAS TO CHANGE?

- Stop pre-filling forms to invite conversation and negotiation
- See challenges as opportunities
- Let go of assumptions
- Communicate offers of compensation effectively

WHAT STAYS THE SAME?

- Adhering to the Code of Ethics in all your dealings with clients and each other
- Educating your clients to make informed decisions
- Complying with fair housing laws and principles
- Delivering a high level of professional services

CONSUMER GUIDE TO REALTOR®'S DUTY



CONSUMER GUIDE:

REALTORS® DUTY TO PUT CLIENT INTERESTS ABOVE THEIR OWN

A **REALTOR®** is a special kind of real estate agent: one who follows NAR's strict Code of Ethics, including the first and primary pledge to protect and promote the interests of their clients. This obligation means that a **REALTOR®** cannot make decisions or provide representation in a way that puts their own interests or commissions ahead of their clients' interests.

What does it mean for a REALTOR® to act in a BUYER's best interest? A **REALTOR®** has an ethical duty to tell a buyer about every home available for sale that meets their criteria. That means that **REALTORS®** will let you know about all available homes, regardless of whether the seller or listing broker is offering compensation to your buyer's agent, and even if compensation offered by a seller or listing broker is less than what you agreed to pay your agent in your written buyer agreement.

What does it mean for a REALTOR® to act in a SELLER's best interest? A **REALTOR®** should explain to their seller the benefits and costs of the various types of marketing that can be done for a listing, and how potential buyers might respond to such marketing. A **REALTOR®** is ethically prohibited from telling a seller that their home will be hidden from buyers unless the seller pays a particular type or amount of compensation.

What is wrongful "steering"? The **REALTOR®** Code of Ethics prohibits "steering" buyers toward homes because the **REALTOR®** will be paid more, or away from homes because the **REALTOR®** will be paid less. Similarly, the **REALTOR®** Code of Ethics prohibits a **REALTOR®** from telling a seller that buyers will be "steered" toward homes because the **REALTOR®** will be paid more, or away from homes because the **REALTOR®** will be paid less.

How do written agreements protect me from steering? As of August 17, 2024, you will be asked to sign a written buyer agreement before touring a home with the professional you want to work with. NAR's ethical rules have long encouraged **REALTORS®** to enter into written agreements with their clients because these agreements promote clarity and transparency. They also help protect you from wrongful "steering" by specifying the amount of compensation the **REALTOR®** will receive and the services they will provide. Since a broker working with a buyer receives the amount the buyer has agreed to, the amount of any offer of compensation is irrelevant to the buyer-broker's compensation.

Where can I learn more about buyer agreements? NAR has created a dedicated resource on written buyer agreements [here](#).

What can I do if I think a REALTOR® is violating NAR's Code of Ethics? If a **REALTOR®** acts in a way that places their interests before yours, this is a violation of NAR's Code of Ethics and should be reported to your [state or local REALTOR® Association](#) for investigation and potential disciplinary action.



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RESOURCES



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ABR DESIGNATION

Topics Covered

- Conveying your value to the buyer-client
- Conducting a seamless, productive buyer counseling session
- Guiding a buyer-client through the search-showing-selection process
- Negotiating buyer-clients' offers



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FACTS.REALTOR

Topics Covered

- FAQs
- Consumer guides
- Broker resources
- Settlement documents
- Policy changes
- Toolkit with social media assets



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CONSUMER GUIDES

Topics Covered

- Written Buyer Agreements
- Open Houses
- REALTORS® Duty
- What Veterans Need to Know
- Offers of Compensation
- Negotiation Written Buyer Agreements
- Seller Concessions
- MLSs
- Fair Housing
- Listing Agreements

WINDOW TO THE LAW

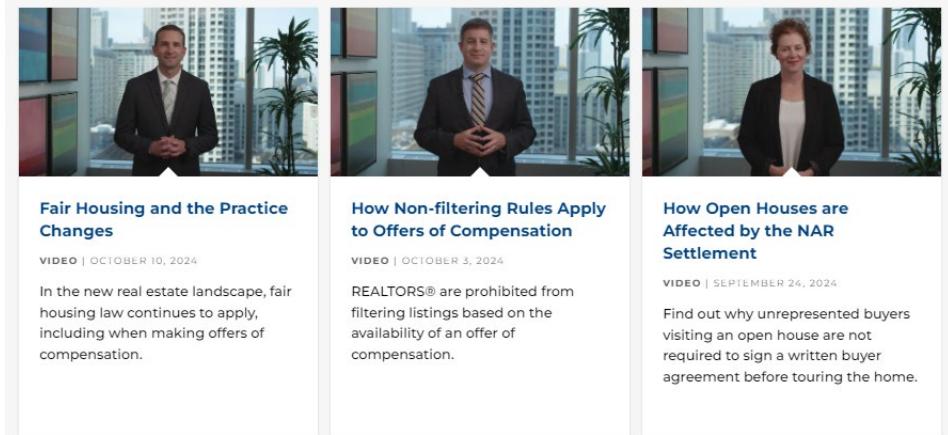
“Settlement Facts” Videos



How the Practice Changes Apply to Transaction Brokerage
VIDEO | OCTOBER 14, 2024
The practice changes apply in states where transactional brokerage is allowed, even if the broker does not legally represent the buyer or seller.

How the Code of Ethics Applies to Practice Changes
VIDEO | OCTOBER 14, 2024
A REALTOR®'s duties under the Code of Ethics are not affected by the practice changes.

How the NAR Settlement Impacts Procuring Cause
VIDEO | OCTOBER 14, 2024
Even with the practice changes, procuring cause remains relevant in determining arbitration awards.



Fair Housing and the Practice Changes
VIDEO | OCTOBER 10, 2024
In the new real estate landscape, fair housing law continues to apply, including when making offers of compensation.

How Non-filtering Rules Apply to Offers of Compensation
VIDEO | OCTOBER 3, 2024
REALTORS® are prohibited from filtering listings based on the availability of an offer of compensation.

How Open Houses are Affected by the NAR Settlement
VIDEO | SEPTEMBER 24, 2024
Find out why unrepresented buyers visiting an open house are not required to sign a written buyer agreement before touring the home.



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**For the latest information, please visit:
Facts.Realtor**