

NIESAR & VESTAL LLP

## Law Alert

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### **NAR Settlement: Two Key Changes That Real Estate Practitioners Need to Know**

On August 17, 2024, new rules governing how most real estate professionals do business in the United States went into effect.

These rules are a result of the National Association of Realtors (NAR) settlement agreement that resolved several lawsuits against NAR. The settlement resolves claims against NAR and nearly every member; all state, territorial and local Realtor<sup>1</sup> associations; all association-owned Multiple Listing Services (MLS); and all brokerages with a NAR member as principal whose residential transaction volume in 2022 was \$2 billion or below.

In a statement, Kevin Sears, NAR's president, said that the changes "help to further empower consumers with clarity and choice when buying and selling a home."

Most real estate practitioners should be aware of two key changes:

#### **1. Elimination of Multiple Listing Services (MLS) Compensation Offers.**

NAR has created a new MLS rule prohibiting compensation offers on the MLS. Previously, buyers were not expected to pay their real estate broker directly. That is because realtor commission fees (to both the buyers' broker and the sellers' broker) were paid by a home seller. This practice ensured that buyer brokers had information regarding exactly how they would be compensated.

Effective August 17, 2024, neither sellers nor their brokers are allowed to advertise commission fees to buyers' brokers on the MLS. This change aims to ensure that the compensation structures are more transparent to all parties involved in a transaction.

#### **2. Mandatory Buyer Representation Agreements.**

NAR also requires that all Realtor MLS Participants working with buyers enter into written agreements with the prospective buyer before the buyer tours a home. To the extent that such a Realtor or Participant will receive compensation from any source, the agreement must specify and conspicuously disclose the amount or rate of compensation it will receive or how this amount will be determined. In addition, the amount of compensation reflected must be objectively ascertainable and may not be open-ended (e.g., buyer-broker compensation shall be whatever amount the seller is offering to the buyer for buyer-broker's compensation). Finally,

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<sup>1</sup> "Realtor" is a registered trademark of the NAR.

such a Realtor or Participant may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the agreement with the buyer.

This change aims to provide more transparency around commission structures and to inform buyers that this commission is fully negotiable.

On its website, NAR said that these two changes have “eliminated any theoretical steering, because a broker will not make more compensation by steering a buyer to a particular listing because it has a ‘higher’ offer of compensation.”

If you have questions arising out of the aforementioned rules and/or their implications, please feel free to contact Alan Seher ([aseher@nvlawllp.com](mailto:aseher@nvlawllp.com)) or Carolina Aricu ([caricu@nvlawllp.com](mailto:caricu@nvlawllp.com)).

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