



NAR Settlement

10 Practice Changes You Need To Know

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- 1) **Effective Date** - as per the settlement required practice changes must be implemented by August 17, 2024.
- 2) **Offers of Compensation** - you can no longer advertise offers of compensation on an MLS. The new MLS policies prohibit any information about compensation on an MLS. But you can advertise compensation on off-MLS sites such as brokerage companies' sites.
- 3) **Steering** - under NAR's Code of Ethics, steering buyers based on the amount of broker compensation is prohibited. NAR has emphasized that MLS participants must not limit the listings their client sees because of broker compensation.
- 4) **Cap on Compensation** – MLS participants may not receive compensation for brokerage services from any source that exceeds the amount or rate agreed to in the buyer's broker's agreement. The logic is that these changes eliminate any theoretical risk that a buyer's broker will steer due to the fact that they will not make more compensation by steering a buyer to a different listing because the compensation for that listing is higher than what is in the buyer's broker's agreement.
- 5) **Marketing Seller's Willingness to Pay a Buyer's Broker** – listing agents are permitted to advise their sellers that marketing a seller's willingness to pay certain buyer's expenses, including a buyer's broker will be well received by

potential buyers. However, a listing broker must make sure not to tell a seller that the seller must pay a buyer's broker or buyer's brokers will steer their buyers elsewhere based on the amount of commission the seller is willing to pay.

6) **Listing Agreements** – listing agents must disclose to sellers that brokers' commissions are not set by law and are fully negotiable. The same applies to buyer's broker's agreements. This disclosure should be made expressly clear in any agreement.

7) **Buyer's Broker's Agreements** – these agreements must clearly state what the buyer's broker's commission will be and a buyer's broker cannot receive more than this sum even if a seller is willing to pay more. The biggest benefit to buyers' brokers with these agreements (in the case they are exclusive) is that it binds a buyer to work with a specific broker for the duration of the agreement and should a buyer decide to pursue a property with a different broker while this agreement is in place, then the buyer's broker would have a valid claim for commission against that buyer. Please note that a buyer's broker's agreement cannot offer a range of compensation as any compensation must be set in stone and not open-ended.

8) **First Substantive Contact** – this is the barometer used for agency disclosure and when a broker must ask their buyer to sign the agency disclosure form. It is our recommendation that the same standard apply when a buyer's broker asks a buyer to sign the buyer's brokers agreement. Specifically, it is required that written buyer agreements are required before a broker can take a buyer to "tour a home." However, if a broker is performing "ministerial acts" without the expectation of being compensated for those acts and prior to touring a home, then a written agreement is not required at that time. Please note that the phrase "ministerial acts" has yet to be specifically defined.

9) **Open Houses** – if a listing agent hosts an open house and their representation is limited to the seller, they do not need to have signed agreements with buyers who chose to be unrepresented.

10) **Multiple Buyer's Broker's Agreements** – NAR policy does not dictate that a buyer's broker can only have one agreement in place with a buyer. The term of the agreement is flexible, and buyer's brokers can have different agreements for specified properties or limit the term of the agreement to as short as one day. Brokers would not be able to have multiple agreements which are active with a buyer for the same services in hopes of a buyer's broker hedging their risk that a seller is willing to pay more in commission than the sum stipulated in the buyer's broker's agreement.